

March 29, 2018

VIA COURIER

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Request for Emergency Order Pursuant to Federal Power Act Section 202(c)

Dear Secretary Perry:

Pursuant to Section 202(c) of the Federal Power Act ("FPA"),<sup>1</sup> Section 301(b) of the Department of Energy ("DOE") Organization Act,<sup>2</sup> and certain of the DOE's Rules of Practice and Procedure,<sup>3</sup> FirstEnergy Solutions Corp. ("FirstEnergy Solutions"), on behalf of its named subsidiaries ("Applicants"),<sup>4</sup> respectfully requests that the Secretary of Energy ("Secretary") find that an emergency condition exists in the footprint of the PJM Interconnection, L.L.C. ("PJM") that requires immediate intervention by the Secretary, in the form of a Section 202(c) emergency order directing: (a) certain existing nuclear and coal-fired generators in PJM,<sup>5</sup> as detailed herein, to enter into contracts and all necessary arrangements with PJM, on a plant-by-plant basis, to generate, deliver, interchange, and transmit electric energy, capacity, and ancillary services as needed to maintain the stability of the electric grid and (b) PJM to promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide to energy markets and the public at large, including fuel security and diversity, as detailed herein.

PJM has done little to prevent this emergency despite the numerous signs for many years that the emergency was coming. Nuclear and coal-fired generators in PJM have been closing at a rapid rate<sup>6</sup> putting PJM's system resiliency at risk and many more closures have been

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<sup>1</sup> 16 U.S.C. § 824a(c).

<sup>2</sup> 42 U.S.C. § 7151(b).

<sup>3</sup> 10 C.F.R. §§ 205.370-205.373.

<sup>4</sup> The named subsidiaries are: FirstEnergy Generation, LLC, FirstEnergy Nuclear Generation, LLC, FirstEnergy Nuclear Operating Company, and FirstEnergy Generation Mansfield Unit 1 Corp. The foregoing entities are all wholly owned subsidiaries of FirstEnergy Solutions Corp. which, in turn, is a wholly owned subsidiary of FirstEnergy Corp., a publicly-traded, utility holding company headquartered in Akron, Ohio.

<sup>5</sup> A list of the nuclear and coal-fired generating plants in PJM believed to be currently operating is provided as Attachment A hereto. As explained in Section II.F, only a subset of these plants would be subject to the requested Order.

<sup>6</sup> In the past four years, over 11,000 MW of coal-fired generation within the PJM footprint has closed, the equivalent of a dozen large power plants. MONITORING ANALYTICS, LLC, 2017 STATE OF THE MKT. REPORT FOR

announced.<sup>7</sup> PJM continues to claim that all is well with its system,<sup>8</sup> but at the same time shows it does not have a clear view of what resilience is, how to measure it, or how to ensure it.<sup>9</sup> PJM has demonstrated little urgency to remedy this problem any time soon<sup>10</sup> so immediate action by the Secretary is needed to alleviate the present emergency.

## I. BACKGROUND AND SUMMARY

It is in the national interest to ensure a dependable, affordable, safe, fuel-secure, and clean supply of electricity produced by a diverse array of energy resources, including coal, natural gas, nuclear material, flowing water, and renewable resources. Such diversity of generation enhances dependable and resilient electric supply, reduces electricity price volatility, ensures the Nation's economic and physical security, and promotes economic development. As you stated recently, "America's greatness depends on a reliable, resilient electric grid powered by an 'all of the above' mix of generation resources" that "must include traditional baseload generation with on-site fuel storage that can withstand major fuel supply disruptions caused by natural and man-made disasters."<sup>11</sup> Indeed, "[o]ur economy, government and national defense all depend on electricity. Therefore, ensuring a reliable and resilient electric supply and corresponding supply chain are vital to national security."<sup>12</sup>

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PJM, VOL. 2: DETAILED ANALYSIS 544 tbl.12-5 (Mar. 8, 2018), (listing coal unit retirements of 2,239 MW, 7,064.8 MW, 243 MW, and 2,038 MW in 2014, 2015, 2016, and 2017, respectively) [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2017.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml) ("2017 PJM Report").

<sup>7</sup> See Section II.B, *infra*.

<sup>8</sup> See, e.g., Comments and Responses of PJM Interconnection, L.L.C. at 4, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, FERC Docket No. AD18-7-000 (Mar. 9, 2018) ("To be clear, the PJM [Bulk Electric System ("BES")] is safe and reliable today – it has been designed and is operated to meet all applicable reliability standards. However, improvements can and should be made to make the BES more resilient against known and potential vulnerabilities and threats. In many cases, resilience actions are anchored in, but go beyond what is strictly required for compliance with, the existing reliability standards.") ("PJM Comments"); Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule at 25, *Grid Reliability and Resilience Pricing*, FERC Docket No. RM18-1 (Oct. 23, 2017) ("[T]he performance of the PJM system in response to incredibly taxing events like the 2014 Polar Vortex demonstrate the reliability and resilience of the system created by effective transmission planning and development and the energy and capacity markets.").

<sup>9</sup> See, e.g., PJM Comments at 3-4. *Contrast* Response of the New York System Operator, Inc. at 1, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, FERC Docket No. AD18-7-000 (Mar. 9, 2018) (referring to "efforts already underway (or being considered) to ensure continued reliable operation and bolster resiliency in response to the evolving nature of the bulk power system in New York").

<sup>10</sup> PJM indicates that it will follow any FERC mandate to study the resiliency issue and, *if* changes are needed, pursue solutions. PJM Comments at 5-6. But the emergency exists presently, not in the future, and immediate action is needed *now*, not more time to study.

<sup>11</sup> Letter from Rick Perry, U.S. Sec'y of Energy, to Chairman & Comm'rs of FERC at 1 (Sept. 28, 2017) ("Secretary NOPR Letter").

<sup>12</sup> *Id.* at 2.

The Nation depends heavily on a steady and dependable supply of electricity at all times. Electricity both figuratively and literally powers the Nation—its homes, its businesses, its industries, government buildings, and defense installations. Electricity is thus vital not only to the health, safety, and welfare of the Nation, but also to its economic and physical well-being. Our adversaries understand this too. As explained by Dr. Paul Stockton, former Assistant Secretary of Defense, the Nation's adversaries "may seek to disrupt U.S. defense capabilities by attacking the critical infrastructure on which our military bases rely. . . . The power grid and fuel supplies for power generation are potential targets for these adversaries."<sup>13</sup> The importance of the electric grid and its fuel supply network to our Nation's well-being cannot be overstated.

Yet, as DOE is undoubtedly aware, threats to the Nation's power supply and grid are real and can no longer be ignored. The Nation's security is jeopardized if DOE does not act now to preserve fuel-secure generation and the diversity of supply.<sup>14</sup> The very diversity of supply that baseload nuclear and coal-fired units provide is being lost more and more each day as more and more of these plants retire because their fuel security and resiliency are not properly recognized and valued by the current administrative market rules. Rather, we, as a Nation, "need to properly recognize the value of each resource, being mindful of its role in our national defense [and] economic security" and, in this regard, "account for the value of on-site fuel storage capability" of nuclear and coal-fired generating resources.<sup>15</sup> To this effect, immediate action is needed to ensure that such traditional baseload generation receives compensation commensurate with the value it provides to the Nation and thus remains in service and available to power the Nation in times of need. As you have noted, "urgent action must be taken to ensure the resilience and security of the electric grid, which is so vitally important to the economic and national security of the United States."<sup>16</sup>

The recent cold weather in the East has provided a real-time, real-life demonstration as to why immediate action is so critical to ensure the health and safety of the Nation. From December 27, 2017, through January 8, 2018, the eastern U.S. saw extremely cold temperatures and spiking electric demand, which would likely have been far worse had it occurred only two weeks later after the holiday season ended. If not for the over-performing nuclear and coal-fired generating plants in PJM,<sup>17</sup> the eastern portion of the country would likely have seen grid reliability impacts,

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<sup>13</sup> Comments of Exelon Corp., Testimony of Paul Stockton at 5-6, *Grid Reliability and Resilience Pricing*, FERC Docket No. RM18-1-000 (Oct. 23, 2017).

<sup>14</sup> Secretary NOPR Letter at 8 ("If, for example, we lose our educated workforce or no longer have the ability to build and operate our baseload plants because of short-sighted policies, it will not only weaken our workforce, but will threaten our energy dominance and national security.").

<sup>15</sup> *Id.*

<sup>16</sup> Letter from Rick Perry, U.S. Sec'y of Energy, to Kevin McIntyre, Chairman, FERC at 2 (Dec. 8, 2017) ("Secretary Extension Letter").

<sup>17</sup> See, e.g., Tim Loh, Chris Martin & Naureen S. Malik, *America's Deep Freeze is Aiding Coal and Sending Power Up*, BLOOMBERG (Dec. 28, 2017), <https://www.bloomberg.com/news/articles/2017-12-28/america-s-deep-freeze-is-aiding-coal-and-sending-power-surging> ("In the PJM market . . . coal has once again surged past natural gas to become the biggest fuel for power generation."), Tiffany Hsu, *Deep Freeze in U.S. Creates Heating Squeeze for Homeowners and Utilities*, N.Y. TIMES (Jan. 3, 2018),

as natural gas plants significantly underperformed in large part due to natural gas price spikes and supply interruptions.<sup>18</sup> As a recent DOE study of this cold weather event found (the “NETL Report”), nuclear and coal-fired generation provided 70 percent of output during the event and “coal units in PJM were uniquely positioned to provide the resilience needed at this critical point in time,” providing “74 percent of incremental energy.”<sup>19</sup> The study went on to conclude that:

*In the case of PJM, it can also be shown that the demand could not have been met without coal. At peak demand, January 5, 2018, natural gas prices exceeded \$95/MMBtu in eastern PJM. Had coal been removed, a 9-18 GW capacity shortfall would have developed, depending on assumed imports and generation outages, leading to system collapse.<sup>20</sup>*

As the report stated, “[e]xperience with such blackouts indicates the potentially enormous toll in both economic losses and human suffering associated with widespread lack of electricity.”<sup>21</sup>

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<https://www.nytimes.com/2018/01/03/business/heating-homeowners-winter.html> (noting that due to high heating demand, “[m]any utilities turned to coal and oil to generate electricity as the price of natural gas, their usual fuel of choice, surged”); Jeremiah Shelor, *Extreme Cold Drives Record-Setting Week in NatGas Cash; Futures See Warm-Up Ahead*, NATURAL GAS INTELLIGENCE (Jan. 5, 2018), <http://www.naturalgasintel.com/articles/112977-extreme-cold-drives-record-setting-week-in-natgas-cash-futures-see-warm-up-ahead> (“With blizzard conditions arriving late in the week along the East Coast just in time to pile on after recent bitterly cold temperatures, natural gas spot price blowouts ran rampant . . . . The conditions driving the exorbitant cash prices appeared to be a perfect storm of widespread weather-driven demand and pipeline constraints.”); PJM INTERCONNECTION, PJM COLD SNAP PERFORMANCE DEC. 28, 2017 TO JAN. 7, 2018 13 & fig.10 (Feb. 26, 2018), *available at* <http://www.pjm.com/-/media/library/reports-noticees/weather-related/20180226-january-2018-cold-weather-event-report.ashx> (reporting that nuclear and coal generation combined constituted 63% of the online fuel mix during the 2018 cold snap) (“PJM COLD SNAP PERFORMANCE 2018”).

<sup>18</sup> See, e.g., Naureen S. Malik, *Blizzard Triggers 60-Fold Surge in Prices for U.S. Natural Gas*, BLOOMBERG (Jan. 4, 2018), <https://www.bloomberg.com/news/articles/2018-01-04/natural-gas-in-u-s-soars-to-world-s-priciest-as-snow-slams-east>; *Cold Weather, Higher Exports Result in Record Natural Gas Demand*, ENERGY INFO. ADMIN. (“EIA”) (Jan. 5, 2018), <https://www.eia.gov/todayinenergy/detail.php?id=34412> (noting record natural gas demand due in part to recent cold weather); PJM COLD SNAP PERFORMANCE 2018 at 16 (concluding that “[g]as supply issues were the largest” cause of forced outages due to fuel supply issues during the 2018 cold snap, “particularly the weekend of Jan. 6 and Jan. 7, as temperatures reached their lowest points,” and that supply issues “include transportation restrictions and interruptions as well as spot gas commodity availability”).

<sup>19</sup> NAT’L ENERGY TECH. LAB., RELIABILITY, RESILIENCE AND THE ONCOMING WAVE OF RETIRING BASELOAD UNITS VOLUME I: THE CRITICAL ROLE OF THERMAL UNITS DURING EXTREME WEATHER EVENTS 12 (Mar. 13, 2018) (“NETL Report”), *available at* <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>. To the extent necessary, Applicants incorporate the NETL Report by reference as if it were filed in full as an attachment to this Application. The findings in the NETL Report fully support the Secretary determining that an emergency exists within the meaning of FPA Section 202(c) that warrants immediate action.

<sup>20</sup> *Id.* at 17 (emphasis added).

<sup>21</sup> *Id.* at 3.

Overall, DOE estimated that “the value of [coal- and oil-]based power generation resilience” in PJM during this cold weather event was \$3.5 billion.<sup>22</sup>

But this is not the first time nuclear and coal-fired generation has saved PJM. In January 2014, a “Polar Vortex” spiked customer demand, dropping system reserves in PJM to just 500 MW (on a demand of over 140,000 MW).<sup>23</sup> PJM calculated that 9,300 MW of generation was unavailable during this event due to interruptions in the natural gas supply to generators.<sup>24</sup> While this loss of generating capacity could have been catastrophic, multiple coal-fired generating units slated for retirement were dispatched to meet electric demand<sup>25</sup> and nuclear generators also “performed extremely well.”<sup>26</sup> “Sixty-five million people within the PJM footprint could have been affected if these traditional baseload units were not available.”<sup>27</sup>

Combined, the Polar Vortex and this past winter’s extreme cold have shown the value that nuclear and coal-fired generators bring to the electric grid. Just as temperatures plummeted during these periods, the output of nuclear and coal-fired generators spiked. Specifically, during the period December 26, 2017, through January 6, 2018, coal-fired and nuclear generation in PJM averaged output levels of 46,038 MW and 35,485 MW, respectively.<sup>28</sup> These levels are over 50 percent greater than the average output of coal-fired generation during the 24 months ending September 2017 (of 29,849 MW) and over 10% greater than the average output of nuclear generation during those 24 months (of 32,167 MW).<sup>29</sup> Further, the output levels of coal-fired generators over this 12-day period are well above historical January levels, which tend to see the highest average outputs of such units of any months of the year.<sup>30</sup> By any measure, the output of coal-fired and nuclear generating facilities in PJM was exceptional over these recent 12 days.

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<sup>22</sup> *Id.* at 1, 16.

<sup>23</sup> PJM INTERCONNECTION, ANALYSIS OF OPERATIONAL EVENTS AND MARKET IMPACTS DURING THE JANUARY 2014 COLD WEATHER EVENTS 4 (May 8, 2014), *available at* <http://www.pjm.com/~media/library/reports-notices/weather-related/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx>.

<sup>24</sup> *Id.* at 26.

<sup>25</sup> Secretary NOPR Letter at 3.

<sup>26</sup> *See id.* (citing U.S. DEP’T OF ENERGY, STAFF REPORT TO THE SECRETARY ON ELECTRICITY MARKETS AND RELIABILITY 95 (Aug. 2017) (“Staff Report”).

<sup>27</sup> Secretary NOPR Letter at 3.

<sup>28</sup> *See Generation by Fuel Type*, PJM INTERCONNECTION, [http://dataminer2.pjm.com/feed/gen\\_by\\_fuel](http://dataminer2.pjm.com/feed/gen_by_fuel).

<sup>29</sup> *See* PJM INTERCONNECTION, STATE OF THE MARKET REPORTS FOR 2012 THROUGH Q3 2017, [http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2018.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2018.shtml) (as converted from GWh to MW).

<sup>30</sup> Specifically, during the three Januarys from 2015 to 2017, coal-fired generation in PJM averaged output of 37,234 MW (and nuclear generation averaged 34,845 MW). *See id.*

The chart below illustrates the spike in nuclear and coal-fired output over this period.<sup>31</sup> Notably, coal- and oil-fired generation spiked, and nuclear generation rose materially, but gas-fired generation dropped, not only from its average output levels but even from levels seen only a few days prior. As Andrew Ott, PJM's President and CEO, recently testified:

[D]uring this recent cold weather event, obviously more than half of the total supply was coal and nuclear. Certainly, [PJM] couldn't survive without gas; [PJM] couldn't survive without coal; [PJM] couldn't survive without nuclear. [PJM needs] them all in the moment. And I think the key, and what [PJM is] focused on, is each of these bring to the table reliability characteristics. Each of these was online when [PJM] needed them.<sup>32</sup>

The strong performance of the nuclear and coal-fired units in PJM was a needed counterbalance to the situation for gas-fired units. Specifically, during the cold snap, dramatic price increases were seen in natural gas prices; including for example a spike in PJM at the Texas Eastern M3 interface, in Southeastern Pennsylvania, from a normal level near \$3/MMBtu to \$96/MMBtu.<sup>33</sup> Further, "in eastern PJM . . . gas and electric transmission were severely constrained, leading to . . . elevated natural gas and electricity prices across [the] region."<sup>34</sup> The price increases would have been even more dramatic but for the over performance of nuclear and coal-fired units.

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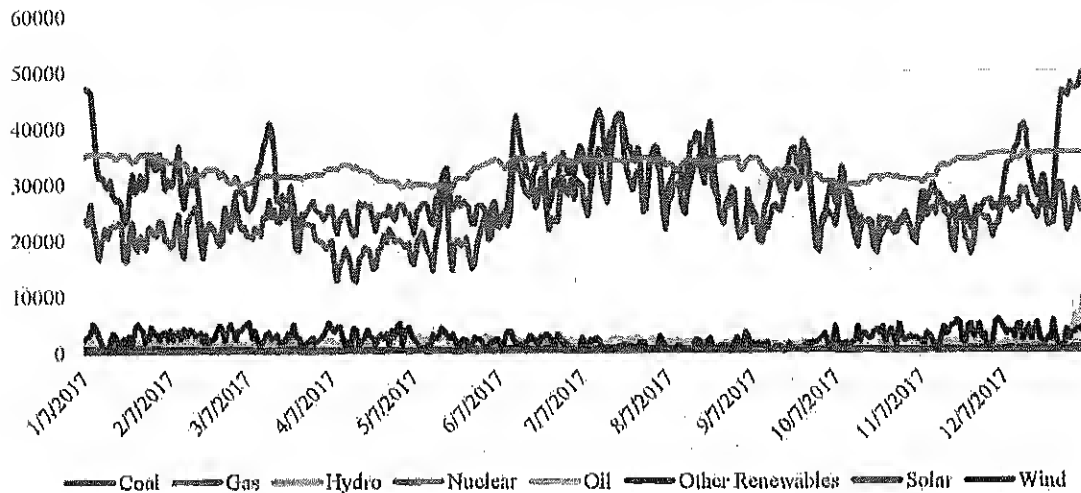
<sup>31</sup> See *Generation by Fuel Type*, PJM INTERCONNECTION, [http://dataminer2.pjm.com/feed/gen\\_by\\_fuel](http://dataminer2.pjm.com/feed/gen_by_fuel). This chart excludes March 29, March 30, and April 2, 2017 because no data was reported for those dates.

<sup>32</sup> Press Release, Sen. Lisa Murkowski, Hearing Spotlights Importance of Energy Infrastructure, Diverse Fuel Mix (Jan. 23, 2018) (quoting Andrew Ott), <https://www.murkowski.senate.gov/press/release/hearing-spotlights-importance-of-energy-infrastructure-diverse-fuel-mix>.

<sup>33</sup> NETL Report at 14.

<sup>34</sup> *Id.* at 6. See also *id.* at 7 (showing a four-fold increase in daily load weighted average marginal electricity price in PJM between December 30, 2017 and January 6, 2018).

### PJM Average Hourly Output By Fuel Type (MW)



But the very same nuclear and coal-fired power plants that allowed PJM to maintain reliability during these extreme weather events are at imminent risk of permanent closure if something is not done *now*. The Energy Information Administration “projects 41 GW of coal and 10 GW of nuclear retirements by 2025,” but, as the NETL Report notes, this projection does not “adequately capture[] the risk” of retirements.<sup>35</sup> The report further projects that “as much as 75 GW of coal-fired generation could be retired” by 2025, and notes that another source estimates between “30 and 50 GW of nuclear could face retirement.”<sup>36</sup> Without these plants, thousands if not millions of customers could have been without power during sub-zero degree temperatures. And absent immediate and decisive action by DOE, the 11,000 MW of nuclear and coal-fired generation that have kept PJM operating during this period will begin to retire *in the very near future*. As Andrew Ott, PJM’s President and CEO, recently testified, 1,410 MW of nuclear capacity and 3,688 MW of coal-fired capacity that operated during the recent cold snap in the eastern U.S. are scheduled to deactivate within the next five years.<sup>37</sup> This testimony is consistent with the NETL Report’s finding that:

The 30 GW of coal that ramped up to meet the surge in PJM load [during the recent cold weather event] clearly includes the units most likely to retire due to insufficient market support, given those units were not running at baseload levels before the event. As more of

<sup>35</sup> NETL Report at 25.

<sup>36</sup> *Id.* at 30.

<sup>37</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

these units retire, the ability of the system to respond to extreme events with reliance, let alone economically, deteriorates.<sup>38</sup>

Further, it is a matter of public record that FirstEnergy Solutions, which through Applicants indirectly owns 12,300 MW of generation, likely will file for bankruptcy by the end of March 2018.<sup>39</sup> Indeed, Charles Jones, CEO of FirstEnergy Corp., recently stated that he would be “shocked” if FirstEnergy Solutions did not file soon.<sup>40</sup> FirstEnergy Solutions already submitted notice to PJM that it would deactivate its nuclear assets—Davis-Besse and Perry in Ohio and Beaver Valley in Pennsylvania—in 2020 and 2021.

“Distorted price signals” in the organized markets overseen by the Federal Energy Regulatory Commission (“FERC”), such as PJM, “have resulted in under-valuation of grid reliability and resiliency benefits provided by traditional baseload resources, such as [those powered by] coal and nuclear” fuel.<sup>41</sup> As you have recognized, “[b]ecause wholesale pricing in those markets does not adequately consider or accurately value those benefits, generation units that provide the benefits are often not fully compensated for them.”<sup>42</sup> The NETL Report similarly summarized the problem: “Markets do not currently compensate resilience, and thus that capability is steadily diminishing due to competitive pressures of ongoing, baseload power plant early retirements.”<sup>43</sup>

This lack of appropriate compensation, among other things, has resulted in the Nation’s nuclear and coal-fired generation closing at an alarming and unprecedented rate. For example “between 2002 and 2016, 531 coal[-fired] generating units representing approximately 59,000 MW of generation capacity retired from the U.S. generation fleet.”<sup>44</sup> In addition, “[i]t is anticipated that approximately 12,700 MW of coal[-fired generation] will retire through 2020.”<sup>45</sup> Further, “between 2002 and 2016, 4,666 MW of nuclear generating capacity was announced for

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<sup>38</sup> NETL Report at 18.

<sup>39</sup> Gavin Bade, *FirstEnergy CEO Says Generation Subsidiary Headed for Bankruptcy Protection*, UTILITY DIVE (Feb. 23, 2018), <https://www.utilitydive.com/news/firstenergy-ceo-says-generation-subsidiary-headed-for-bankruptcy-protection/517743/>; Jeffrey Ryser, *FirstEnergy Continues Push Away from Competitive Generation Subsidiary*, PLATTS MEGAWATT DAILY (Feb. 22, 2018).

<sup>40</sup> Recording of Fourth Quarter 2017 Earnings Webcast, FIRSTENERGY (Feb. 21, 2018), <https://services.choruscall.com/links/fe180221.html> (Mr. Jones stating, at 25:18, “Well, I said in my prepared remarks that I expect that [FES] will be removed from the unregulated money pool between now and the end of March, and that will be the last tie that we have with that business. While I can’t speak for FES, I will be shocked if they go beyond the end of March without some type of a filing.”).

<sup>41</sup> Secretary NOPR Letter at 1.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> NETL Report at 3.

<sup>44</sup> Secretary NOPR Letter at 2 (citing Staff Report at 22).

<sup>45</sup> *Id.* (citing EIA, *Monthly Update to the Annual Electric Generator Report*, Form EIA-860m (June 2017), <https://www.eia.gov/electricity/data/eia860m/>).



retirement” and “[e]ight reactors representing 7,167 MW of nuclear capacity . . . have announced retirement plans since 2016.”<sup>46</sup>

These retirements must stop immediately in PJM lest the grid be placed at risk of failure through a lack of generation diversity and over-reliance on generating units that lack secure fuel supply and often compete with other industries and customers for limited firm fuel delivery capabilities. As your staff found, “fuel supply chain disruptions can impact many generators during a single widespread fuel shortage event,” but “[n]uclear and coal[-fired power] plants typically have advantages associated with onsite fuel storage. . . .”<sup>47</sup> Such generating units with on-site storage capacity kept PJM from shedding load during the 2014 Polar Vortex when available generating capacity was only a hair’s width more than demand. And such units have been critical to keeping the grid supplied during the severe cold weather in the East this past winter. But the continued existence of such fuel-secure, baseload units cannot be taken for granted. Unless immediate action is taken, they will continue to retire and PJM and the Nation are likely not to be so lucky as to avoid load-shedding (or worse) the next time generation supply is stretched to its limit.

FERC has for several years failed to heed this warning and to act to prevent this impending crisis. Indeed, FERC has had the opportunity to prevent this crisis on numerous occasions, including the opportunity you provided it through your Notice of Proposed Rulemaking (“NOPR”) issued pursuant to FPA Section 403.<sup>48</sup> Although you granted FERC’s request to extend the NOPR proceeding, you stated that you would continue to examine “all options within [your] authority under the *Department of Energy Organization Act*, the *Federal Power Act*, and any other authorities to take remedial action as necessary to ensure the security of the nation’s electric grid.”<sup>49</sup>

Despite the fact that the time for such remedial action has come, FERC terminated your rulemaking proceeding and chose instead merely to study the issue further.<sup>50</sup> And although FERC acknowledged that “resilience remains an important issue that warrants the Commission’s continued attention,”<sup>51</sup> it dismissed evidence establishing the threat to resilience posed by the

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<sup>46</sup> *Id.* at 3 (citing Staff Report at 29-30).

<sup>47</sup> Staff Report at 91. *See also* NETL Report at 14 (“As for natural gas-fired electricity generation, two significant constraints inhibit its fuel resilience contribution during extreme weather events. . . . Most importantly, demand from competing sectors, especially from residential and commercial space heating, takes priority over electricity for natural gas use, limiting and even diminishing the capacity potential for natural gas-based electricity. Compounding this constraint is that of pipeline capacity. Even though abundant natural gas may be available, it must flow through the same limited pipeline capacity already delivering to increased heating demand.”).

<sup>48</sup> *See generally* Secretary NOPR Letter. *See also* NETL Report at 3 (“The need for reasonable compensation to maintain resilient capacity to endure such periodically-certain threats to the nation formed the basis of [DOE’s] resilience compensation proposal to [FERC].”).

<sup>49</sup> Secretary Extension Letter at 2 (italics in original).

<sup>50</sup> *Grid Reliability and Resilience Pricing et al.*, 162 FERC ¶ 61,012 (2018).

<sup>51</sup> *Id.* at P 13.

imminent loss of additional nuclear and coal-fired generation and found instead that “the extensive comments submitted by the [regional transmission organizations and independent system operators (“RTOs/ISOs”)] do not point to any past or planned generator retirements that may be a threat to grid resilience.”<sup>52</sup> Further, FERC concluded that it lacked the legal authority to act on your proposed rule for lack of a showing that current rules were unjust or unreasonable.<sup>53</sup>

FERC’s response was disappointing. FERC’s reliance on comments by RTOs/ISOs—the very entities that preside over the flawed markets—is misplaced.<sup>54</sup> More fundamentally, FERC’s decision to study the issue further is too little, too late. As Commissioner Chatterjee noted, “[m]ajor regulatory reform efforts often can take several years to complete.”<sup>55</sup> The record before FERC, however, demonstrated that the time to act is now. Multiple commenters expect that the trend of premature, economic retirement of nuclear and coal-fired generators will continue if left unaddressed.<sup>56</sup> Indeed, seven nuclear units (representing 10,500 MW of nameplate capacity) are planning to retire by 2025.<sup>57</sup> And owners of other nuclear units have stated publicly that they do not intend to invest further in their nuclear units unless and until their host states pass legislation that subsidizes the units.<sup>58</sup>

Even more troubling is that PJM has followed FERC’s lead and decided to kick the can down the road on this critical issue. In its Comments and Responses to FERC’s initiation of a new proceeding on grid resilience, PJM concludes that its bulk electric system “is safe and reliable today—it has been designed and is operated to meet all applicable reliability standards.”<sup>59</sup> While PJM acknowledged that “generation and other resources” supply essential attributes that support reliability and that “the maintenance or assurance of these attributes into the future are important to resilience mitigation,” PJM has committed to nothing more than further study of the issue.<sup>60</sup> And PJM’s position is all the more questionable in light of its admission that it does not conduct

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<sup>52</sup> *Id.* at P 15.

<sup>53</sup> *Id.* at P 14 (“For the reasons discussed below, the Proposed Rule did not satisfy those clear and fundamental legal requirements under section 206 of the FPA. Given those legal requirements, we have no choice but to terminate Docket No. RM18-1-000.”).

<sup>54</sup> Among other justifications for taking no action, FERC noted that the RTOs, and the industry more generally, do not have a clear definition or understanding of the resilience issue. *Id.* at P 22. As such, FERC’s decision to take no action was based on incomplete information.

<sup>55</sup> *Id.* at Chatterjee Concurrence.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Public Service Enterprise Group Inc., SEC Form 8-K, at 2 (Feb. 28, 2018).

<sup>59</sup> PJM Comments at 4.

<sup>60</sup> *Id.* at 46 (“PJM will need to continue to conduct analysis of the anticipated future availability of these attributes so that it can proactively address the maintenance of these attributes through the markets. PJM will also consider the operational lessons learned from other RTOs in regard to resource mix and essential resource attributes to continue to analyze future trends in resource mix and their impacts on both reliability and resilience.”).

system planning or operations subject to formal resilience criteria, and that it would need additional FERC authorization in order to do so.<sup>61</sup>

PJM's conclusion misses the point. As you noted, "urgent action must be taken to ensure the resilience and security of the electric grid."<sup>62</sup> It is insufficient and wholly illogical to say that action is not needed going forward because PJM meets today's reliability criteria. PJM's comments demonstrate that it has yet to identify and measure resilience, much less taken steps to preserve the resilience of its electric grid.<sup>63</sup> Indeed, many of PJM's requests to the Commission do nothing more than pass the buck back to FERC on this critical issue.<sup>64</sup>

Further, PJM's requests for action "to enhance resilience of the grid and interrelated systems"<sup>65</sup> will not address your concerns regarding the resilience and security of the Nation's electric grid. These requests, which call for additional FERC proceedings and RTO/ISO filings, in some cases require no action by any party for nine to twelve months *after the conclusion of the current FERC proceeding* and will do nothing to stem the tide of premature nuclear and coal-fired plant closures in the interim.<sup>66</sup> This is particularly alarming because PJM acknowledges that its Capacity Performance changes have failed to produce a long-term solution "to meet the ever-growing demand for gas transportation by the generation sector."<sup>67</sup> Indeed, natural gas availability

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<sup>61</sup> *Id.* at 33-34.

<sup>62</sup> Secretary Extension Letter at 2.

<sup>63</sup> *See, e.g.*, PJM Comments at 37 ("Because PJM does not have formal resilience criteria, PJM adapts existing analyses . . . to derive conclusions about the ability of the PJM BES to withstand a high-impact, low-frequency event, and is working with stakeholders to determine how best to incorporate resilience into PJM's planning process and what criteria should be used."); *id.* at 66 ("RTO wholesale electricity, Ancillary Service markets, capacity markets, and shortage pricing mechanisms were not originally designed specifically with resilience in mind.").

<sup>64</sup> *See, e.g., id.* at 5 (requesting that FERC "[a]rticulate in this docket that the regional planning responsibilities of RTOs . . . includes an obligation to assess resilience"); *id.* (requesting that FERC "[e]stablish a Commission process . . . that would allow an RTO to receive verification as to the reasonableness of its assessments of vulnerabilities and threats").

<sup>65</sup> *See* PJM Comments at 5-8.

<sup>66</sup> *See, e.g., id.* at 6 ("Request that all RTOs . . . submit a subsequent filing . . . to implement resilience planning criteria, and develop processes for the identification of vulnerabilities, threat assessment and mitigation, restoration planning, and related process or procedures needed to advance resilience planning."); *id.* ("Request that all RTOs . . . submit a subsequent filing, including any necessary proposed tariff amendments, for any proposed market reforms and related compensation mechanisms to address resilience concerns within nine to twelve months from the issuance of a Final Order in this docket.").

<sup>67</sup> *Id.* at 57-58 ("Although PJM was hoping that the Capacity Performance changes would spur a corresponding array of new service offerings by pipelines (and generators seeking such options), at least on the public record such new pipeline services have not been offered as new open season requests . . . . [N]ew flexible services, to the extent they have been offered, appear to have been confined to the secondary market in which available gas from LDCs or industrial customers is made available, for a price, on the non-transparent bilateral secondary market. Although this is an effective short term strategy to 'move around' available capacity and take advantage of diversity in demand, it cannot, in the long run, serve as the sole means to meet the ever-growing demand for gas transportation by the generation sector."). PJM's admission that the Capacity Performance program fell short

during the recent cold weather in the eastern U.S. has prompted PJM to consider enacting emergency operational cost procedures for use when emergency conditions affect the grid or gas pipeline system.<sup>68</sup> PJM's efforts to "to engage interstate pipelines and LDCs to review gas pipeline contingencies"<sup>69</sup> similarly have failed to produce a long-term solution.

The lack of protection for at-risk nuclear and coal-fired plants during this time actually undermines the effectiveness of other PJM requests. For example, PJM requests that FERC require it to file proposed tariff amendments "to permit non-market operations during emergencies," which "could includ[e] provisions for cost-based compensation when the markets are not operational or when a wholesale supplier is directed to take certain emergency actions by PJM for which there is not an existing compensation mechanism."<sup>70</sup> FERC's and PJM's inaction, however, has significantly increased the risk that the very plants needed to take these emergency actions will have shuttered by the time PJM files and FERC approves these tariff provisions.

These events demonstrate that, absent immediate intervention by the Secretary, nuclear and coal-fired plants will continue to retire prematurely. In view of this regulatory failure, and as further detailed herein, Applicants seek action from the Secretary to ensure the continued operation of baseload nuclear and coal-fired power plants in PJM. Such immediate action is necessary to address an emergency in the bulk power system overseen by PJM and to serve the public interest by preventing power disruptions and system blackouts. Absent such an order, health care facilities, emergency services, and other critical infrastructure could be without power affecting portions of the 65 million people that reside within the PJM footprint.

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contrasts sharply with its prior assurances to FERC that the Capacity Performance program would result in firm fuel supply. PJM Interconnection, L.L.C., Reforms to the Reliability Pricing Market ("RPM") and Related Rules in the PJM Open Access Transmission Tariff ("Tariff") and Reliability Assurance Agreement Among Load Serving Entities ("RAA") at 53, FERC Docket No. ER15-623-000 (Dec. 12, 2014) ("Capacity Market Sellers that now will face more harsh financial consequences for a failure to perform during emergencies (with no limit on when such emergencies arise) will likely need to invest in plant design changes or new equipment, or increase operating budgets to accommodate more staff, firm fuel delivery arrangements, greater inventories, or changed operating practices.").

<sup>68</sup> Jared Anderson, *PJM Mulls Emergency Operational Cost Issues*, PLATTS MEGAWATT DAILY (Jan. 10, 2018).

<sup>69</sup> PJM COLD SNAP PERFORMANCE 2018 at 21-22.

<sup>70</sup> PJM Comments at 6.

## II. APPLICATION FOR EMERGENCY ORDER

In the United States, RTOs work to ensure the operation and security of the bulk electric power system. PJM operates the electric grid and centralized electricity markets in all or part of 13 different states and the District of Columbia,<sup>71</sup> overseeing over 178,000 MW of installed capacity and serving approximately 65 million people.<sup>72</sup> Over half of PJM's generating capacity is nuclear and coal-fired generation,<sup>73</sup> and nearly one-quarter of the Nation's nuclear and coal-fired generating capacity is located within PJM.<sup>74</sup>

PJM's power markets, however, consistently fail to compensate nuclear and coal-fired generators for the full value of the benefits that they provide, such as fuel security and diversity. As stated by a former Commissioner of FERC, "I believe that fuel diversity is really key in ensuring reliability going forward, even in these dynamic times . . . [I]t is imperative that we protect fuel diversity."<sup>75</sup> Such continued fuel diversity in PJM, however, is at risk.

PJM's independent market monitor recently found that between six and nine nuclear plants, with a total capacity of 7,058 MW to 14,027 MW, did not recover their avoidable costs—the costs to keep the generators operating—in two of the last three years.<sup>76</sup> Additionally, four nuclear plants, with capacity of 3,554 MW, are not expected to recover their annual avoidable costs on average from 2018 through 2020.<sup>77</sup> The market monitor similarly found that a "significant number of coal units are at risk of retirement" because 17,302 MW of coal-fired capacity is expected to receive less than 90 percent of its avoidable costs.<sup>78</sup> Overall, the market monitor found that, in addition to units currently planning to retire, between 22,929 MW and 30,785 MW of capacity in PJM,

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<sup>71</sup> PJM's territory includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. *Who We Are*, PJM, <http://www.pjm.com/about-pjm/who-we-are.aspx> (last visited Mar. 22, 2018); *PJM's Mission & Vision*, PJM, <http://www.pjm.com/about-pjm/who-we-are/mission-vision.aspx> (last visited Mar. 22, 2018).

<sup>72</sup> *Capacity by Fuel Type*, PJM (June 1, 2017), <http://www.pjm.com/-/media/markets-ops/ops-analysis/capacity-by-fuel-type-2017.nshx?la=en>; *Who We Are*, PJM, <http://www.pjm.com/about-pjm/who-we-are.aspx> (last visited Mar. 22, 2018).

<sup>73</sup> *Capacity by Fuel Type*, PJM (June 1, 2017) (showing nuclear and coal-fired generation represent 19% and 33% of PJM's installed generation capacity, respectively).

<sup>74</sup> *Compare id.* (showing that nuclear and coal-fired generation represent 33,992 MW and 59,835 MW of PJM's installed generation capacity, respectively), with *Preliminary Monthly Generator Inventory*, EIA (June 2017), <https://www.eia.gov/electricity/data/eia860m/> (showing, when filtered by "Technology," 284,439 MW of conventional steam coal generator nameplate capacity and 104,628 MW of nuclear generator nameplate capacity as of June 2017 nationwide).

<sup>75</sup> *Oversight of the Federal Energy Regulatory Commission: Hearing Before the Subcomm. on Energy and Power*, 114th Cong., Prelim. H'rg Tr. at 54 (2015) (testimony of Colette D. Honorable, Commissioner, FERC).

<sup>76</sup> 2017 PJM Report at 2.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

primarily from nuclear and coal-fired generation, is at risk of retirement.<sup>79</sup> In fact, the market monitor found that over 90 percent of the “at-risk” generation in PJM was either nuclear or coal-fired.<sup>80</sup> But new nuclear and coal-fired generation will not replace this lost capacity because, as the market monitor found, “[i]n 2017 . . . a new coal plant and a new nuclear plant would have been significantly unprofitable.”<sup>81</sup>

By contrast, nearly all oil, natural gas, hydroelectric, and pumped storage generators recovered fully their avoidable costs in 2017.<sup>82</sup> This marked difference is a result of the fact that nuclear and coal-fired units are baseload plants. As such, they are designed to run “24/7” on a consistent basis with 25 days of on-site fuel availability (when running “full bore”), making them the backbone of the electric system.<sup>83</sup> PJM’s energy market, though, is designed not to consider or incentivize operational diversity, fuel security, or system resiliency. Rather, it dispatches generation units based only on short-term marginal price without regard for the fixed costs of the facility, or the firmness of its fuel supply or transportation. Specifically, PJM uses a reliability-constrained least-cost model to dispatch the lowest-cost units required to satisfy electricity demand.<sup>84</sup> But because nuclear and coal-fired units are designed to run continuously, they often continue to operate through lower-priced periods—such as the middle of the night—sometimes requiring them to sell their electricity output at a loss. This is particularly true in states with large amounts of wind-powered generation, as wind tends to generate at its peak overnight when electricity demand is low.<sup>85</sup> The unavoidable requirement to operate during lower-priced periods places significant financial strain on baseload units such as nuclear and coal-fired generators that are not properly compensated in the existing markets.<sup>86</sup> All indications are that these trends will continue.

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at tbl.7-36.

<sup>81</sup> *Id.* at 6.

<sup>82</sup> *Id.* at tbl.7-30.

<sup>83</sup> See N. AM. ELEC. RELIABILITY CORP., POLAR VORTEX REVIEW 36-37 (Sept. 2014), [http://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar\\_Vortex\\_Review\\_29\\_Sep\\_t\\_2014\\_Final.pdf](http://www.nerc.com/pa/rrm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sep_t_2014_Final.pdf) (“[A] growing dependence on gas-fired generation can increase the [bulk power system’s] exposure to disruptions from insufficient fuel supply, transportation, and delivery. . . . Unlike coal and fuel oil, natural gas is not easily stored on site.”). Cf. PJM INTERCONNECTION, PJM’S EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 35 (Mar. 30, 2017) (“[R]ecent studies, including the Black Sky/Black Start Protection Initiative, suggest that 30 days of fuel inventory would be required to adequately respond to Black Sky type events.”).

<sup>84</sup> See *Market for Electricity*, PJM, <http://learn.pjm.com/electricity-basics/market-for-electricity.aspx> (last visited Mar. 22, 2018).

<sup>85</sup> See, e.g., Scott DiSavino, *Texas Power Demand to Hit 2016 Peak Amid Heat Wave: ERCOT*, REUTERS (Aug. 4, 2016), <http://www.reuters.com/article/us-usa-texas-power-heatwave-idUSKCN10F202> (noting that wind generation in ERCOT “typically produce[s] most energy overnight”).

<sup>86</sup> Markets only provide signals that lead to efficient decisions on the part of market participants if the markets “efficiently price all valuable services provided to the system.” FirstEnergy Reply Comments, Ex. 1 (“Hunger Reply Aff.”) at 9, *Grid Resiliency Pricing Rule*, FERC Docket No. RM18-1-000 (Nov. 7, 2017).

PJM's market monitor cursorily dismissed this undeniable trend of nuclear and coal-fired generation retirements because of under-recovery, stating that "[m]any generating plants have retired in PJM since the introduction of markets and many generating plants have been built since the introduction of markets" and that "[t]he fact that some plants are uneconomic does not call into question the fundamentals of PJM markets."<sup>87</sup> This response is alarming to say the least. Nuclear and coal-fired generation provides substantial resilience and security benefits to the electric grid and to the Nation. Indeed, as the market monitor itself recognized, "[s]ignificant reliance on specific fuels, including nuclear, coal and gas means that markets are at risk from a significant disruption in any one fuel."<sup>88</sup> By treating the lost nuclear and coal-fired capacity the same as the non-nuclear and non-coal-fired capacity that has replaced it, the market monitor ignores the significant threat to the electric grid and the Nation's security posed by the loss of resilient, fuel-secure baseload generation.

As explained below, Applicants request that DOE determine that an emergency exists in PJM within the meaning of FPA Section 202(c) with respect to a threat to energy security and reliability, and thus direct the subject baseload nuclear and coal-fired generators to enter into contracts and all necessary arrangements with PJM, on a plant-by-plant basis, to generate, deliver, interchange, and transmit electric energy, capacity, and ancillary services to maintain fuel diversity and grid dependability and resiliency within the PJM region.

#### **A. The Secretary's Authority Under Section 202(c) of the Federal Power Act**

Section 202(c) of the Federal Power Act grants the Secretary the authority to determine "that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy,"<sup>89</sup> and, once such a determination is made, "to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in [his] judgment will best meet the emergency and serve the public interest."<sup>90</sup>

The Secretary's authority and discretion under Section 202(c) is quite broad and is not limited to emergencies caused by war or limited in duration. Section 202(c) states that it may be invoked during times of war or during emergencies, and empowers the Secretary "whenever [he] determines that an emergency exists by reason of" certain specified market conditions "or other causes" to order actions "as in [his] judgment will best meet the emergency and serve the public interest."<sup>91</sup>

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<sup>87</sup> 2017 PJM Report at 2.

<sup>88</sup> *Id.* at 5.

<sup>89</sup> 16 U.S.C. § 824a(c)(1).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* The legislative history of Section 202(c) confirms this interpretation, explaining that in crisis conditions DOE should be "ready to do all that can be done in order to prevent a break-down in electric supply." S. Rep. No. 74-621, at 49.

DOE's regulations define emergency broadly, stating that an emergency "can result from a sudden increase in customer demand, an inability to obtain adequate amounts of the necessary fuels to generate electricity, or a regulatory action which prohibits the use of certain electric power supply facilities."<sup>92</sup> In addition, the regulation also states that "[e]xtended periods of insufficient power supply as a result of inadequate planning or the failure to construct necessary facilities can result in an emergency . . . ."<sup>93</sup>

The current situation in PJM constitutes such an emergency.

**B. An Emergency Exists Due to the Recent and Imminent Critical Reduction in Nuclear and Coal-Fired Generation Capacity**

The Nation's bulk electric system is undergoing rapid change. As the DOE recently recognized, the provision of electricity provides various benefits that are not recognized or compensated by the markets created by these politically driven actions:

Society places value on attributes of electricity provision beyond those compensated by the current design of the wholesale market.

- Americans and their elected representatives value the various benefits specific power plants offer, such as jobs, community economic development, low emissions, local tax payments, resilience, energy security, or the national security benefits associated with a nuclear industrial base. Most of these benefits are not recognized or compensated by wholesale electricity markets.<sup>94</sup>

Indeed, the DOE's January 2017 Quadrennial Energy Review states that "[s]hort-run markets may not provide adequate price signals to ensure long-term investments in appropriately configured capacity" and "resource valuations tend not to incorporate superordinate network and/or social values such as enhancing resilience into resource or wires investment decision making."<sup>95</sup> IHS Energy has found that, as a result of this "missing money" problem, "the loss of

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<sup>92</sup> 10 C.F.R. § 205.371.

<sup>93</sup> *Id.*

<sup>94</sup> Staff Report at 11.

<sup>95</sup> U.S. DEP'T OF ENERGY, TRANSFORMING THE NATION'S ELECTRICITY SYSTEM: THE SECOND INSTALLMENT OF THE QUADRENNIAL ENERGY REVIEW 4-41 (January 6, 2017), available at <https://www.energy.gov/sites/prod/files/2017/02/f34/Quadrennial%20Energy%20Review--Second%20Installment%20%28Full%20Report%29.pdf>.



power supply diversity is accelerating because too many power plants are retiring before it is economic to do so.”<sup>96</sup>

This market failure is reaching a crisis point. Dr. David Hunger, a former FERC Staff member and Vice President within the Energy Practice of Charles River Associates, found that “there were more [generator] retirements in the seven-year period from 2010 to 2016 (457 units) than in the 20-year period from 1990 to 2009 (358 units). Likewise, the quantity of nuclear and coal-fired generation capacity retired in 2010-2016 (68,540 MW nameplate) was more than double that in the prior 20 years, 1990-2009 (26,721 MW nameplate).”<sup>97</sup> As the DOE concluded, “[g]enerator profitability could become a public policy concern if so much generation is financially challenged that the reliability or resilience of the [bulk power system] become threatened.”<sup>98</sup> The rash of nuclear and coal-fired generator closings and other recent events in PJM are evidence that it already is a public policy concern. But these are not the only warning signs.

January 2014 Polar Vortex in PJM: A severe cold snap spiked customer demand, dropping system reserves in PJM to just 500 MW (on a demand of over 140,000 MW).<sup>99</sup> PJM calculated that 9,300 MW of generation was unavailable during this event due to interruptions in the natural gas supply to generators.<sup>100</sup> While this loss of generating capacity could have been catastrophic, multiple coal-fired generating units slated for retirement were dispatched to meet electric demand<sup>101</sup> and nuclear generators also “performed extremely well.”<sup>102</sup> “Sixty-five million people within the PJM footprint could have been affected if these traditional baseload units were not available.”<sup>103</sup>

Extreme Cold in December 2017 and January 2018: From December 27, 2017, to January 8, 2018, the eastern U.S. saw extremely cold temperatures and spiking electric demand, which again illustrate how such weather impacts natural gas supply to electric generating units. Nuclear

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<sup>96</sup> IHS ENERGY, THE VALUE OF US POWER SUPPLY DIVERSITY 7 (July 2014), available at <https://www.nei.org/CorporateSite/media/filefolder/Backgrounders/Reports-Studies/IHS-Fuel-Diversity-Study-18-July-2014.pdf?ext=.pdf>.

<sup>97</sup> FirstEnergy Comments, Ex. 4 (“Hunger Aff.”) at 22, *Grid Resiliency Pricing Rule*, FERC Docket No. RM18-1-000 (Oct. 23, 2017).

<sup>98</sup> Staff Report at 118. NERC has also classified the changing resource mix as a “high risk” issue for the electric grid. See N. AM. ELEC. RELIABILITY CORP., STATE OF RELIABILITY 2017 7 (June 2017), available at [https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/SOR\\_2017\\_MASTER\\_20170613.pdf](https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/SOR_2017_MASTER_20170613.pdf).

<sup>99</sup> PJM INTERCONNECTION, ANALYSIS OF OPERATIONAL EVENTS AND MKT. IMPACTS DURING THE JAN. 2014 COLD WEATHER EVENTS 4 (May 8, 2014), <http://www.pjm.com/-/media/library/reports-notices/weather-related/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.nshx>.

<sup>100</sup> *Id.* at 26.

<sup>101</sup> Secretary NOPR Letter at 3.

<sup>102</sup> Staff Report at 95.

<sup>103</sup> Secretary NOPR Letter at 3.

and coal-fired plants out-performed natural gas plants during this period by a significant margin.<sup>104</sup> For example, on the morning of Friday, January 5, 2018, nuclear and coal-fired generators were running at 135% and 111% of their committed capacity in PJM's 2017-2018 capacity auction, whereas natural gas plants were running at merely 45% of their committed capacity.<sup>105</sup> In fact, while over 64,000 MW of gas-fired generation cleared in the 2017-2018 capacity auction, only approximately 29,000 MW were running that morning.<sup>106</sup> As the recent NETL Report on the cold weather event concluded, demand in PJM "could not have been met without coal."<sup>107</sup> These facts are quite telling, as much of this difference can be attributed to natural gas price spikes and supply interruptions.<sup>108</sup> While the PJM grid has not experienced load-shedding, thanks to lower electric demand over the holiday season and the performance of nuclear and coal-fired generators, this may not be the case during future extreme weather events if the trend of nuclear and coal-fired plant closures continues.<sup>109</sup>

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<sup>104</sup> See PJM COLD SNAP PERFORMANCE 2018 at 13 & fig.10 (showing that nuclear and coal-fired generation combined constituted 63% of the online fuel mix during the 2018 cold snap, while natural gas-fired generation constituted 22%).

<sup>105</sup> See *Data Miner 2*, PJM, <http://www.pjm.com/markets-and-operations/etools/data-miner-2.aspx> (when filtered to Generation by Fuel Type for 8 a.m. on January 5, 2018, showing nuclear and coal-fired output of 35,543 MW and 50,254.8 MW, respectively); *Commitments by Fuel Type & Delivery Year 2007/08 - 2019/20*, PJM, <http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-commitment-by-fuel-type-by-dy.ashx?la=en> (last visited Mar. 22, 2018) (showing cleared UCAP for 2017-2018 planning year of 26,401 MW for nuclear generation and 45,354 MW for coal-fired generation).

<sup>106</sup> See *Data Miner 2*, PJM, <http://www.pjm.com/markets-and-operations/etools/data-miner-2.aspx>, (when filtered to Generation by Fuel Type for 8 a.m. on January 5, 2018, showing gas output of 28,624.3 MW); *Commitments by Fuel Type & Delivery Year 2007/08 - 2019/20*, PJM, <http://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-commitment-by-fuel-type-by-dy.ashx?la=en> (last visited Mar. 22, 2018) (showing cleared UCAP for 2017-2018 planning year of 64,089 MW for gas-fired generation); see also PJM COLD SNAP PERFORMANCE 2018 at fig.11.

<sup>107</sup> NETL Report at 17.

<sup>108</sup> Operational flow orders (restrictions/limitations placed on gas consumption by pipeline operators) have been in place on numerous natural gas pipelines throughout PJM since late December 2017, including Transco, Texas Eastern, Dominion, and Columbia. See Transco Pipeline, *Critical Notices*, <http://www.1line.williams.com/Transco/index.html> (last visited Mar. 22, 2018); Texas Eastern, *Critical Notices*, <https://infopost.spectraenergy.com/infopost/> (last visited Mar. 22, 2018); Dominion, *Critical Notices*, [http://dekaflow.dominionenergy.com/jsp/info\\_post.jsp?&company=dti](http://dekaflow.dominionenergy.com/jsp/info_post.jsp?&company=dti) (last visited Mar. 22, 2018); Columbia Gas Transmission, *Critical Notices*, <http://www.columbiapipeinfo.com/epginfopost/> (last visited Mar. 22, 2018). See also NETL Report at 14 ("[N]atural gas in PJM spiked from a normal level near \$3/MMBtu to \$96/MMBtu at the Texas Eastern M3 interface, in Southeastern PA, at the [bomb cyclone] peak on January 5.").

<sup>109</sup> NETL Report at 18 ("To maintain the resilience seen in this event, any retiring units that were dispatched during the event would have to be replaced with other resilient generation sources and their associated infrastructure (e.g. pipelines, transmission). Due to the timeframe required for permitting, development, and construction, these projects must be well underway prior to potential unit retirements to ensure their availability.").

June 2017 Yorktown Un-Retirement: The Department of Energy issued a Section 202(c) order to force Dominion Energy to keep its Yorktown coal-fired units in PJM online to address future reliability needs.<sup>110</sup>

System Design Changes: The bulk power system is undergoing a rapid transformation and the impacts of this change are not being fully studied or understood. The system is moving from one that was driven by sound engineering practices and multiple redundancies to a system using an economic model with no consideration for system needs. The North American Electric Reliability Corporation ("NERC") has noted that the "changing resource mix is altering the operating characteristics of the bulk power system."<sup>111</sup> NERC warned that these changes must be "properly managed in order to assure continued reliability and ensure resiliency."<sup>112</sup>

Pipeline Vulnerabilities: A report published by Quanta Technology noted high levels of vulnerability in PJM from a shortfall of pipeline capacity supplying the Atlantic coast, a shortfall of pipeline capacity to access storage and production, disruptions in supply or storage during winter peak season, and a lack of firm gas supply contracts.<sup>113</sup>

Future Price Volatility: A recent report by IHS Energy states that the current diversified portfolio of the U.S. power supply lowers the cost of generating electricity by more than \$93 billion per year compared to a less diverse case with no meaningful contributions from nuclear and coal-fired generation.<sup>114</sup> As such key baseload plants continue to retire, price volatility is expected to rise as the system becomes more reliant on a single fuel source.<sup>115</sup> Dr. Hunger similarly concluded that, "[w]hen resources retire, [market] prices can fluctuate in an unpredictable manner."<sup>116</sup>

Baseload Plant Closures: In the past four years, over 11,000 MW of coal-fired generation has closed in PJM, the equivalent of a dozen large power plants.<sup>117</sup> Many of these plants were

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<sup>110</sup> Order No. 202-17-2 (Dep't of Energy June 16, 2017), *reh'g dismissed sub nom.* Order No. 202-17-5 (Sep. 15, 2017). *See also* Order No. 202-17-4 (Dep't of Energy Sep. 14, 2017) (renewing initial order), *reh'g dismissed sub nom.* Order No. 202-18-1 (Nov. 6, 2017); Order No. 202-18-2 (Dep't of Energy Dec. 13, 2017) (further renewing order).

<sup>111</sup> Letter from Gerry Cauley, President and CEO, NERC, to Rick Perry, U.S. Sec'y of Energy, Attachment ("Synopsis of NERC Reliability Assessments") at 1 (May 9, 2017), *available at* <https://www.nerc.com/news/Headlines%20DL/DOE%20Grid%20Study%20Comments%2012OCT17.pdf>

<sup>112</sup> *Id.*

<sup>113</sup> HENRY CHAO, COMMENTS OF QUANTA TECHNOLOGY ON PJM'S EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 11 (May 17, 2017), *available at* [http://quanta-technology.com/sites/default/files/QuantaTechnology\\_Comments\\_on\\_PJM%20Whitepaper.pdf](http://quanta-technology.com/sites/default/files/QuantaTechnology_Comments_on_PJM%20Whitepaper.pdf).

<sup>114</sup> IHS ENERGY, THE VALUE OF US POWER SUPPLY DIVERSITY at 5.

<sup>115</sup> *See id.* at 9-10.

<sup>116</sup> Hunger Aff. at 33.

<sup>117</sup> 2017 PJM Report at 544 tbl.12-5 (listing coal unit retirements of 2,239 MW, 7,064.8 MW, 243 MW, and 2,038 MW in 2014, 2015, 2016, and 2017, respectively).

operating during the 2014 Polar Vortex and are no longer available to run in the event of system stress.

Problems Associated with Location of Replacement Resources: Generation resources used to replace retiring plants are frequently located far away from the location of the retiring generation, which poses multiple problems. First, as Dr. Hunger states, this “may cause temporary or persistent congestion, increasing uncertainty related to locational pricing, a primary signal against which generation investment or retirement decisions need to be made.”<sup>118</sup> Second, significant new transmission infrastructure may need to be constructed. For example, approximately \$1 billion of new transmission infrastructure was needed to maintain reliability after closure of certain generating units in northern Ohio in 2014 and 2015.<sup>119</sup>

Additional Plant Closures: Numerous baseload plants in PJM have announced that they are financially challenged and are closing or contemplating closure. If action is not taken, thousands of additional megawatts of reliable baseload power will retire in the next several years, leaving PJM without fuel-secure baseload resources.<sup>120</sup>

- It is a matter of public record that FirstEnergy Solutions, which through Applicants indirectly owns 12,300 MW of generation, likely will file for bankruptcy by the end of March 2018.<sup>121</sup> Multiple plants are at risk for permanent closure as a result of this expected action.
- FirstEnergy Solutions submitted notices to PJM on March 28, 2018, that it would deactivate its three nuclear plants, Davis-Besse (908 MW), Perry (1,268 MW), and Beaver Valley (1,872 MW), by 2021.

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<sup>118</sup> Hunger Aff. at 33.

<sup>119</sup> Direct Testimony of Gavin Cunningham at 3, Application of Ohio Edison et al., Pub. Util. Comm’n of Ohio No. 14-1297-EL-SSO (Aug. 4, 2014).

<sup>120</sup> In addition to the closures listed, Dominion submitted deactivation requests in January 2018 for four coal-fired units with capacity totaling approximately 400 MW. PJM FUTURE DEACTIVATIONS (Dec. 29, 2017), <http://www.pjm.com/-/media/planning/gen-retire/pending-deactivation-requests.ashx?la=en> (“PJM FUTURE DEACTIVATIONS”). These units were placed in “cold reserve”—meaning they could be restarted if necessary—based on a number of factors including the cost of solar and wind generation and the abundance of natural gas. Sarah Rankin, *Dominion to Eliminate Nearly 400 Positions After Review of Power Generation Group*, RICHMOND TIMES-DISPATCH (Jan. 17, 2018), [http://www.richmond.com/news/virginia/dominion-to-eliminate-nearly-positions-after-review-of-power-generation/article\\_60633a02-01d5-50a8-bcfc-f2ccf04b8fb5.html](http://www.richmond.com/news/virginia/dominion-to-eliminate-nearly-positions-after-review-of-power-generation/article_60633a02-01d5-50a8-bcfc-f2ccf04b8fb5.html).

<sup>121</sup> Gavin Bade, *FirstEnergy CEO Says Generation Subsidiary Headed for Bankruptcy Protection*, UTILITY DIVE (Feb. 23, 2018), <https://www.utilitydive.com/news/firstenergy-ceo-says-generation-subsidiary-headed-for-bankruptcy-protection/517743/>; Jeffrey Ryser, *FirstEnergy continues Push Away from Competitive Generation Subsidiary*, PLATTS MEGAWATT DAILY (Feb. 22, 2018).

- FirstEnergy Corp. announced that Units 5–7 at the W.H. Sammis coal-fired plant (1,490 MW) are in danger of being closed. The company previously announced that Units 1–4 (720 MW) will close by May 2020.<sup>122</sup>
- FirstEnergy Corp. has announced that the 2,510 MW Bruce Mansfield coal-fired plant is at risk of closure due to the exposure to changing market conditions.<sup>123</sup>
- Allegheny Energy Supply Company, LLC, a FirstEnergy Corp. subsidiary, recently submitted a deactivation notice for Pleasants Power Station, a 1,300 MW coal-fired plant in West Virginia.<sup>124</sup>
- Dayton Power & Light has announced the closure by June 2018 of the J.M. Stuart coal-fired plant (2,318 MW) and the Killen Station Unit 2 coal-fired plant (600 MW), citing market conditions making the plants not economically viable.<sup>125</sup> Stuart Unit 1 was closed even earlier, on September 30, 2017.<sup>126</sup>
- Owners of the 1,884 MW Homer City coal-fired power plant attempted to sell the plant in 2016, but were unable to find a buyer; Standard & Poor's analysts cite lower power prices and increasing expenses as driving forces behind the facility's ills.<sup>127</sup>
- Westmoreland Partners recently announced the sale or closure of the 209 MW Roanoke Valley coal-fired power plant.<sup>128</sup> As anticipated, on March 1, 2017, these units retired.<sup>129</sup>

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<sup>122</sup> *FirstEnergy to Deactivate Units at Two Ohio Power Plants*, FIRSTENERGY (July 22, 2016), [https://www.firstenergycorp.com/content/fecorp/newsroom/news\\_articles/firstenergy-to-deactivate-units-at-two-ohio-power-plants-.html](https://www.firstenergycorp.com/content/fecorp/newsroom/news_articles/firstenergy-to-deactivate-units-at-two-ohio-power-plants-.html); PJMFUTURE DEACTIVATIONS.

<sup>123</sup> Tom Henry, *FirstEnergy Exec Calls for 'Urgent' Aid*, TOLEDO BLADE (Mar. 25, 2017), <http://www.toledoblade.com/Energy/2017/03/25/FirstEnergy-exec-calls-for-urgent-aid.html>.

<sup>124</sup> *Id.* In addition, during the first quarter of 2018, FirstEnergy Corp. took a \$120 million pre-tax impairment charge on the value of the Pleasants Power Station. FirstEnergy Corp., Annual Report (Form 10-K) at 4 (Feb. 20, 2018).

<sup>125</sup> See Wendy Mitchell, *DP&L Determined to Close J.M. Stuart and Killen Power Plants*, THE LEDGER INDEP. (Mar. 20, 2017), [http://www.maysville-online.com/news/local/dp-l-determined-to-close-j-m-stuart-and-killen/article\\_99f244cf-b832-5477-aa8b-831b8fe796be.html](http://www.maysville-online.com/news/local/dp-l-determined-to-close-j-m-stuart-and-killen/article_99f244cf-b832-5477-aa8b-831b8fe796be.html); PJM, FUTURE DEACTIVATIONS.

<sup>126</sup> *PJM Generator Deactivations*, PJM (Dec. 18, 2017), <http://www.pjm.com/-/media/planning/gen-iretire/generator-deactivations.ashx?la=en> ("PJM DEACTIVATIONS").

<sup>127</sup> Anya Litvak, *Homer City Gets Bids But No Deals*, PITTSBURGH POST-GAZETTE (Sept. 14, 2016), <http://powersource.post-gazette.com/powersource/companies/2016/09/14/Homer-City-gets-some-bids-but-no-deals/stories/201609110096>.

<sup>128</sup> John Dixon, *Weldon Power Plant Closing*, THE DAILY HERALD (Roanoke) (Mar. 10, 2017), [http://www.rdnailyherald.com/news/local/weldon-power-plant-closing/article\\_6a9f1208-0511-11e7-a204-b762ed148f4a.html](http://www.rdnailyherald.com/news/local/weldon-power-plant-closing/article_6a9f1208-0511-11e7-a204-b762ed148f4a.html).

<sup>129</sup> PJM DEACTIVATIONS.

- Exelon has announced that it will close the Oyster Creek nuclear plant (608 MW) in October 2018—a decade before the end of its operating license—citing negative economic factors.<sup>130</sup>
- Exelon has announced the premature closure of the 837 MW Three Mile Island nuclear power plant in September 2019, citing deteriorating economic value.<sup>131</sup>

**C. The Emergency in Nuclear and Coal-Fired Generation Threatens Generation Diversity, Resiliency, Dependability, and Electric Security in PJM**

A recent PJM report noted that the system was able to maintain operational reliability with a system comprised of 86 percent natural gas-fired generation, however the report did not fully capture risks associated with gas deliverability.<sup>132</sup> PJM itself admits to this issue, stating, “We found that the risk to the system wasn’t that resources couldn’t necessarily provide reliability attributes but that the potential concentration of a single fuel source or low-probability, high-impact events could cause significant impacts to the system.”<sup>133</sup>

Without baseload nuclear and coal-fired generation, the United States is taking the most sophisticated and redundant bulk electric system in the world and putting it on top of an unsophisticated bulk gas system that lacks the same level of redundancy, creating additional security risks. An electric system that is not resilient to high-impact events is not a reliable system, and is one that threatens the national security of the United States. In short, the continued retirement of nuclear and coal-fired generating facilities in PJM has resulted in an emergency situation that has placed the continuing security of PJM at risk. As you noted in your September 28, 2017 letter to FERC, “the resiliency of the electric grid is threatened by the premature retirement of these fuel-secure traditional baseload resources.”<sup>134</sup>

<sup>130</sup> See Press Release, Exelon, Exelon to Retire Oyster Creek Generating Station in 2019 (Dec. 8, 2010), [http://www.exeloncorp.com/newsroom/Pages/pr\\_20101208\\_Nuclear\\_OysterCreekRetirement.aspx](http://www.exeloncorp.com/newsroom/Pages/pr_20101208_Nuclear_OysterCreekRetirement.aspx); Robert Walton, *Exelon to Close Oyster Creek Nuke in October, a Year Early*, UTILITY DIVE (Feb. 2, 2018), <https://www.utilitydive.com/news/exelon-to-close-oyster-creek-nuke-in-october-a-year-early/516236/>; PJM FUTURE DEACTIVATIONS.

<sup>131</sup> See Press Release, Exelon, Exelon to Retire Three Mile Island Generating Station in 2019 (May 30, 2017), <http://www.exeloncorp.com/newsroom/exelon-to-retire-three-mile-island-generating-station-in-2019>; PJM FUTURE DEACTIVATIONS.

<sup>132</sup> PJM INTERCONNECTION, PJM’S EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 5 (Mar. 30, 2017) (“[A]dditional risks, such as gas deliverability during polar vortex-type conditions and uncertainties associated with economics and public policy, were not fully captured in this analysis.”), <http://www.pjm.com/-/media/library/reports-noticees/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx>.

<sup>133</sup> Press Release, PJM, PJM Study: System Reliable Even with Much More Gas, Renewables; Resilience Key to Operational Reliability (Mar. 30, 2017) (emphasis added) (quoting Michael Bryson, PJM Vice President of Operations), <http://www.pjm.com/-/media/about-pjm/newsroom/2017-releases/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx>.

<sup>134</sup> Secretary NOPR Letter at 1.

PJM itself has recognized the need for resiliency, finding that, “[i]n addition to delivering energy services reliably during strained system conditions, to which probabilities can be attached (e.g., plant outages, weather variability), a resilient energy system also must be resistant to larger scale shocks to which it is difficult to attach probabilities . . . .”<sup>135</sup> PJM recently concluded that “reliability attributes supplied through generation and other resources . . . support reliability” and “the maintenance or assurance of these attributes into the future are important to resilience mitigation.”<sup>136</sup> Fuel diversity and security are key components of a resilient grid. PJM acknowledged the connection between diversity and resiliency when it committed to “analyz[ing] future trends in resource mix and their impacts on both reliability and resilience.”<sup>137</sup> As PJM’s market monitor stated, “[s]ignificant reliance on specific fuels, including nuclear, coal and gas means that markets are at risk from a significant disruption in any one fuel.”<sup>138</sup>

NERC goes further, recognizing not only the importance of fuel diversity in maintaining a resilient energy system,<sup>139</sup> but also the critical contributions of nuclear and coal-fired resources to mitigating risks to the electric grid.<sup>140</sup> Overreliance on natural gas, by contrast, *increases* risk to the electric grid because, as NERC states, “within a relatively short time, a major failure” in the natural gas transmission system “could result in a loss of electric generating capacity that could exceed the electric reserves available to compensate for these losses.”<sup>141</sup> As explained by Dr. Henry Chao, Executive Advisor and Vice President at Quanta Technology and former Vice President at New York Independent System Operator (“NYISO”): “Abundant supplies of natural gas provide many advantages to electric consumers, but . . . natural gas delivery systems lack the reliability and redundancy of the bulk electric system. Specifically, there are no systematic reliability criteria for natural gas delivery system planning and operations; whereas the electric power industry has mandatory reliability standards that are developed and enforced by NERC.”<sup>142</sup>

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<sup>135</sup> PJM INTERCONNECTION, PJM’S EVOLVING RESOURCE MIX AND SYSTEM RELIABILITY 33 (Mar. 30, 2017).

<sup>136</sup> PJM Comments at 46.

<sup>137</sup> *Id.*

<sup>138</sup> 2017 PJM Report at 5.

<sup>139</sup> N. AM. ELEC. RELIABILITY CORP., SYNOPSIS OF NERC RELIABILITY ASSESSMENTS: THE CHANGING RES. MIX AND THE IMPACTS OF CONVENTIONAL GENERATION RETIREMENTS 4 (May 9, 2017) (“Fuel diversity provides a fundamental benefit of increased resilience. . . . Areas with limited fuel and/or limited resource diversity may be challenged and should increase their attention to resiliency planning . . . .”).

<sup>140</sup> *Id.* (“Coal and nuclear resources, by design, are designed for low cost O&M and continuous operation. However, it is not the economics nor the fuel type that make these resources attractive from a reliability perspective. Rather, these conventional steam-driven generation resources have low forced and maintenance outage hours traditionally and have low exposure to fuel supply chain issues.”); *id.* at 2 (“Coal-fired and nuclear generation have the added benefits of high availability rates, low forced outages, and secured on-site fuel. Many months of on-site fuel allow these units to operate in a manner independent of supply chain disruptions.”).

<sup>141</sup> N. AM. ELEC. RELIABILITY CORP., 2013 SPECIAL RELIABILITY ASSESSMENT: ACCOMMODATING AN INCREASED DEPENDENCE ON NATURAL GAS FOR ELECTRIC POWER; PHASE II: A VULNERABILITY AND SCENARIO ASSESSMENT FOR THE NORTH AMERICAN BULK POWER SYSTEM 3-4 (MAY 2013).

<sup>142</sup> FirstEnergy Comments, Ex. 6 (“Chao Aff.”) at 11, *Grid Resiliency Pricing Rule*, FERC Docket No. RMI18-1-000 (Oct. 23, 2017).

Unless immediate action is taken, the continued retirement of nuclear and coal-fired generating units—by breeding greater dependence on generation fueled by natural gas, which is subject to supply disruptions, constrained pipeline capacity, a general inability to store fuel on-site, and competing demand from consumer heating in winter months—will increasingly result in significant, negative outcomes for the approximately 65 million people living and working within the PJM footprint. These harmful consequences include increased electric price volatility, lessened grid resilience and dependability, uncertain electric security in the future, decreased economic stability, and severe job losses—especially in the coal sector—as both power plants and fuel suppliers declare bankruptcy and cease operations. Combined, these conditions are potentially disastrous for the electric grid and the economy. PJM itself recently found that as the “resource mix moves in the direction of less coal and nuclear generation, generator reliability attributes of frequency response, reactive capability and fuel assurance decrease. . . .”<sup>143</sup>

This is not idle speculation. As illustrated over the period of extreme cold in the eastern U.S. from December 27, 2017, through January 8, 2018, PJM was able to maintain reliability on its system in large part due to the strong performance from nuclear and coal-fired generators—performance that well exceeded those plants’ commitments in PJM’s capacity auction. In contrast, natural gas-fired plants were operating well below expected levels. Without these fuel-secure baseload generating resources, many of which are facing imminent retirement, the outcome may have been much different. And with temperatures well below freezing throughout virtually all of PJM during this time, a different outcome could have been catastrophic to public health and safety.

The challenges are not limited to just PJM, but are rampant in competitive electric markets throughout the Nation. While traditional vertically integrated utilities continue to provide safe, reliable, and affordable electric generation service every day, areas with RTO markets face problems resulting from the failure to recognize the importance of fuel security and fuel diversity. These incidents provide insight into vulnerabilities potentially facing PJM:

February 26, 2008 Wind Decrease in ERCOT: An unexpected drop in wind generation coupled with a demand increase from cold weather caused ERCOT to have to cut service to large industrial customers.<sup>144</sup> ERCOT had 10 minutes to curtail nearly three percent of the system load to avoid blackouts.<sup>145</sup>

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<sup>143</sup> PJM INTERCONNECTION, PJM’S EVOLVING RES. MIX AND SYSTEM RELIABILITY 5 (Mar. 30, 2017).

<sup>144</sup> Eileen O’Grady, *Loss of Wind Causes Texas Power Grid Emergency*, REUTERS (Feb. 27, 2008), <http://www.reuters.com/article/us-utilities-ercot-wind-idUSN27495229200802287feedType=RSS&feedName=domesticNews&rpc=22&sp=true>; E. ELA & B. KIRBY, NAT’L RENEWABLE ENERGY LAB., ERCOT EVENT ON FEBRUARY 26, 2008: LESSONS LEARNED (July 2008), <http://www.nrel.gov/docs/fy08osti/43373.pdf>.

<sup>145</sup> See Eileen O’Grady, *Loss of Wind Causes Texas Power Grid Emergency*, REUTERS (Feb. 27, 2008), <http://www.reuters.com/article/us-utilities-ercot-wind-idUSN27495229200802287feedType=RSS&feedName=domesticNews&rpc=22&sp=true>.



February 2011 Cold Weather in ERCOT: Rolling blackouts affected 3.2 million customers and, had ERCOT not shed load, a widespread, uncontrolled blackout would have occurred.<sup>146</sup>

New England ISO Winter Reliability Program: Since 2014, the New England Independent System Operator Inc. ("ISO New England") has had to establish winter reliability programs in an attempt to ensure continued operation of natural gas-fired generators during periods of cold weather.<sup>147</sup> Pipeline capacity issues, first identified in 2004, remain issues today and have yet to be solved by the competitive marketplace.<sup>148</sup> As ISO New England recently noted, "[i]n New England, the most significant resilience challenge is fuel security—or the assurance that power plants will have or be able to obtain the fuel they need to run, particularly in winter—especially against the backdrop of coal, oil, and nuclear unit retirements, constrained fuel infrastructure, and the difficulty in permitting and operating dual-fuel generating capability."<sup>149</sup> ISO New England thus concluded that "while New England is meeting its resource adequacy requirements for capacity—which are based on expected summer peak demands—with the market mechanisms that are in place today, from an energy availability standpoint, the shift from generators with on-site fuel to generators relying on 'just-in-time' fuel delivery is challenging the system's adequacy and, therefore, its resilience, particularly during winter peak demands."<sup>150</sup> Indeed, in nearly all of the fuel mix scenarios studied by ISO New England, there would be "[e]nergy shortfalls due to inadequate fuel . . . requiring frequent use of emergency actions to keep power flowing and protect the grid."<sup>151</sup> These emergency actions could include rolling blackouts.<sup>152</sup>

2016-2017 Aliso Canyon in CAISO: A leak at the Aliso Canyon natural gas storage facility was discovered in October 2015, causing the facility to close to subsequent injections until July 2017.<sup>153</sup> Although Aliso Canyon continues to operate, the California Public Utilities Commission

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<sup>146</sup> FEDERAL ENERGY REGULATORY COMM'N & N. AM. ELEC. RELIABILITY CORP., REPORT ON OUTAGES AND CURTAILMENTS DURING THE SOUTHWEST COLD WEATHER EVENT OF FEBRUARY 1-5, 2011 1 (2011).

<sup>147</sup> Press Release, ISO New England, Winter 2015/2016: Sufficient Power Supplies Expected to Be Available (Dec. 1, 2015), available at [https://www.iso-ne.com/static-assets/documents/2015/12/20151201\\_winter\\_outlook\\_release\\_final.pdf](https://www.iso-ne.com/static-assets/documents/2015/12/20151201_winter_outlook_release_final.pdf).

<sup>148</sup> Peter Brandien, Vice President, Operations, ISO New England, Panel Discussion Remarks at 1, *Winter 2016-2017 Operations and Market Performance in Regional Transmission Orgs. and Indep. Sys. Ops.*, FERC Docket No. AD16-24-000 (Oct. 20, 2016).

<sup>149</sup> ISO New England, Response of ISO New England at 1, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, FERC Docket No. AD18-7-000 (Mar. 9, 2018).

<sup>150</sup> *Id.* at 8.

<sup>151</sup> *Id.*, Attachment A at 4-5.

<sup>152</sup> *Id.* In contrast to PJM, which is looking to FERC for guidance and direction, ISO New England is taking initiative and studying fuel security issues. *Id.* at 26.

<sup>153</sup> Rob Nikolewski, *Utility Resumes Injections at Aliso Canyon, Site of Massive Gas Leak*, SAN DIEGO UNION-TRIBUNE (Aug. 1, 2017), <http://www.sandiegouniontribune.com/business/sd-fi-aliso-reinjections-20170801-story.html>.

has opened a proceeding “to determine the feasibility of minimizing or eliminating the use of [the facility]”<sup>154</sup> and legislation was introduced to shut down the facility.<sup>155</sup>

May 3, 2017 CAISO Emergency: Normal system operations quickly turned into an emergency when energy imports failed to materialize.<sup>156</sup> The impacts were heightened as the daily rapid decline of solar power occurred as evening approached.<sup>157</sup> The California Independent System Operator Inc. (“CAISO”) had minutes to deploy emergency reserves and quickly went from normal system operations to a Stage 1 Emergency.<sup>158</sup>

Natural Gas Plant Bankruptcies: In 2016, two large natural gas-fired plants in California, totaling 1,778 MW, declared bankruptcy because they could not make sufficient revenues in the CAISO wholesale markets.<sup>159</sup> In 2017, Panda Temple Power’s 758 MW natural gas plant in Texas filed for bankruptcy.<sup>160</sup> GenOn Energy, with over 9,000 MW of gas-fired generation, filed for bankruptcy in 2017 as well,<sup>161</sup> and recently announced the retirement of three gas-fired power plants located in Southern California due to “economic reasons.”<sup>162</sup>

#### **D. Emergency Action by the Secretary Is Required**

Although FERC complied with the directive of the Secretary pursuant to Section 403 of the DOE Organization Act in issuing a Notice of Proposed Rulemaking addressing these issues,<sup>163</sup> it has failed to undertake any action that will stem the tide of plant closures and thus prevent the impending crisis. You yourself said that “it is [FERC’s] immediate responsibility to take action

<sup>154</sup> CAL. PUB. UTILS. COMM’N, *Aliso Canyon Well Failure Order Instituting Investigation*, <http://www.opuo.ca.gov/AlisoOII/> (last visited Mar. 22, 2018).

<sup>155</sup> Chris Megerian, *Proposal Would Close Aliso Canyon—But Not for A Decade*, L.A. TIMES (Sept. 14, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-aliso-canyon-leak-1505427333.htmlstory.html>.

<sup>156</sup> Jason Fordney, *California Grid Emergency Comes Days After Reliability Warning*, RTO INSIDER (May 8, 2017).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Herman K. Trabish, *As Gas Plants Struggle, California Seeks New Flexible Capacity Strategies*, UTILITY DIVE (June 27, 2017), <http://www.utilitydive.com/news/as-gas-plants-struggle-california-seeks-new-flexible-capacity-strategies/445760/>.

<sup>160</sup> *Id.*; Cody Weems, *Panda Temple I Plant Files for Chapter 11 Bankruptcy*, TEMPLE DAILY TELEGRAM (May 11, 2017), [http://www.tdtnews.com/news/article\\_efa76536-36a3-11e7-8b73-034537689093.html](http://www.tdtnews.com/news/article_efa76536-36a3-11e7-8b73-034537689093.html).

<sup>161</sup> Herman K. Trabish, *As Gas Plants Struggle, California Seeks New Flexible Capacity Strategies*, UTILITY DIVE (June 27, 2017), <http://www.utilitydive.com/news/as-gas-plants-struggle-california-seeks-new-flexible-capacity-strategies/445760/>; see also Andrew Scurlia & Patrick Fitzgerald, *GenOn Energy Files for Chapter 11 Bankruptcy Protection*, WALL ST. J. (June 14, 2017), <https://www.wsj.com/articles/genon-energy-files-for-chapter-11-bankruptcy-protection-1497445051>.

<sup>162</sup> Samantha Masunaga, *NRG Subsidiary to Close Three Power Plants in Southern California*, L.A. TIMES (Mar. 9, 2018), <http://www.latimes.com/business/la-fi-nrg-plants-20180309-story.html>.

<sup>163</sup> Grid Resiliency Pricing Rule, 82 Fed. Reg. 46,940 (Oct. 10, 2017).

to ensure that generation resources with on-site fuel supplies and the ability to provide essential energy and ancillary reliability services including voltage support, frequency services, operating reserves, and reactive power are fully valued. . . .<sup>164</sup> But FERC failed to do so and there is no indication that meaningful and substantive action by FERC will come in time to stem the tide of plant closures.

The DOE correctly recognized that the “recent Polar Vortex, as well as the devastation from Superstorm Sandy and Hurricanes Harvey, Irma, and Maria, reinforces the urgency that [FERC] must act now.”<sup>165</sup> Further, as you observed, “over the past several years, [FERC] has developed an extensive record on price formation [issues] in [FERC] approved ISOs and RTOs.”<sup>166</sup> And, as you recently noted, “[t]he voluminous comments filed in the [FERC NOPR] proceeding provide substantial evidence of, and otherwise confirm, the threat to the nation’s electricity grid and the urgent need for [FERC] action to reform market rules to preserve fuel-secure generation resources.”<sup>167</sup> Despite the urgency and its extensive record, FERC has failed to take the action necessary to address the emergency in PJM.

As you correctly noted, “it is especially urgent to prevent premature retirements of the resources that have these critical [fuel-secure] attributes.”<sup>168</sup> As a result of FERC’s and the RTOs’ failure to address this crisis, swift and decisive action is needed *now* to address this imminent loss of nuclear and coal-fired baseload generation and the threat to the electric grid that this loss poses. The Secretary needs to immediately issue an emergency order, pursuant to his authority under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c), to ensure that baseload nuclear and coal-fired generators in PJM do not retire prematurely and are fully compensated for the benefits and services that they provide, as more fully described in Section II.B above. The order should find that an emergency exists because of the recent and imminent critical reduction in nuclear and coal-fired generation capacity, which threatens generation diversity, resiliency, dependability, and electric security in PJM. As this winter’s events revealed, without the availability of these critical, fuel-secure plants during extreme weather events (which can happen at any time during the year—not just in the winter), the PJM grid will likely experience reliability issues.

#### **E. Information Required by Section 205.373**

Applicants provide below the information called for by Section 205.373 of DOE’s regulations.<sup>169</sup> To be clear, Applicants’ request in this application applies to *all* eligible plants in

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<sup>164</sup> Secretary Extension Letter at 1.

<sup>165</sup> Dep’t of Energy, Notice of Proposed Rulemaking to FERC at 11 (Sept. 28, 2017).

<sup>166</sup> Secretary NOPR Letter at 6.

<sup>167</sup> Secretary Extension Letter at 1.

<sup>168</sup> Secretary NOPR Letter at 1.

<sup>169</sup> 10 C.F.R. § 205.373. Certain elements of Section 205.373 address the circumstances of an applicant facing a shortage of real power and the prospect of firm customer curtailment, but do not address the emergency circumstances described herein, which involve a threat to the system more broadly. Applicants have indicated where these requirements are not applicable to the circumstances at hand.

PJM, not just those that they themselves own and operate. However, at this time Applicants only possess the required information for their own plants. To address this fact, Applicants request that the Secretary require PJM to obtain such information immediately from all eligible generators and begin negotiating agreements for the continued operation and appropriate compensation of such units.

- a) Legal name of applicants. The applicants are FirstEnergy Generation, LLC, FirstEnergy Nuclear Generation, LLC, FirstEnergy Nuclear Operating Company, and FirstEnergy Generation Mansfield Unit 1 Corp. This application refers to these entities, collectively, as "Applicants."

- b) Person to whom correspondence should be addressed. Correspondence with respect to this application should be directed to the following persons:

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- c) Political subdivisions in which applicants operate and conduct business. Applicants own and operate certain nuclear and coal-fired generation assets, and provide energy-related products and services to retail and wholesale customers, in the states of Ohio and Pennsylvania.

- d) Baseline data.

- 1) Daily peak load and energy requirements for each of the past 30 days, and projections for each day of the Emergency Period. These requirements are not applicable to Applicants' request, which contemplates relief on a broad scale. Nonetheless, Applicants provide as Attachment B a chart showing the monthly output of nuclear and coal-fired generation in PJM for the period 2012 through 2017.
- 2) All capacity and energy receipts or deliveries to other electric utilities for each of the past 30 days. Applicants respectfully submit that such information is not applicable to the present application.
- 3) The status of all interruptible customers for each of the past 30 days, and anticipated status during the Emergency Period. Applicants respectfully submit that such information is not applicable to the present application. Applicants are requesting emergency relief to *avoid* the interruption of power supply to the 65 million customers in the PJM footprint.

- 4) All scheduled capacity and energy receipts or deliveries to other electric utilities during the Emergency Period. Applicants respectfully submit that such information is not applicable to the present application.
- e) A description of the emergency situation, any contingency plan, and the current level of implementation. The emergency situation faced by PJM and consumers of electric energy within its footprint is described above in Section I and Section II.B. Applicants do not have any contingency plan to provide power to the PJM market and its 65 million customers absent an order of the Secretary in accordance with the emergency relief requested herein. As explained above, nuclear and coal-fired generating units in PJM are closing at an alarming rate, with efforts to “save” generation for energy security having failed. Implementation prior to the Secretary granting emergency relief is unworkable.
- f) A showing that adequate electric service to firm customers cannot be maintained without additional power transfers. As explained above, the recent and imminent shut-down of nuclear and coal-fired generating units in PJM puts at risk the ability to provide firm, reliable electric service within the PJM footprint without emergency action to maintain the operation of these generating facilities.
- g) A description of any conservation or load reduction actions that have been implemented. PJM has implemented limited demand response efforts in recent years,<sup>170</sup> but these efforts, and future similar ones, cannot come close to replacing the nuclear and coal-fired generation at risk of loss.
- h) A description of efforts made to obtain additional power through voluntary means and the results of such efforts. Applicants respectfully submit that such information is not applicable to the present application because it is the responsibility of PJM, not Applicants, to balance load and resources within the PJM footprint. PJM’s efforts to obtain additional power through voluntary means has been limited to market redesign efforts, such as Capacity Performance, which have failed to add sufficient fuel-secure generating capacity to the PJM market. Additionally, PJM is “fuel neutral” and has undertaken no effort to maintain nuclear and coal-fired generation, which provides fuel diversity and helps ensure sufficiency of supply during times of spiking demand such as that experienced this past winter.
- i) A listing of proposed sources and any amounts of power necessary from each source to alleviate the emergency and a listing of any other “entities” that may be directly affected by the requested order. See Attachment A for listing of nuclear and coal-fired generation facilities in PJM. Applicants submit that firm power supply agreements between PJM and the owners of each nuclear and coal-fired generating facility in PJM satisfying the criteria set forth in Section II.F are necessary to alleviate the emergency. Such generating facilities provide significant

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<sup>170</sup> See *PJM Markets FAQ*, PJM, <https://learn.pjm.com/three-priorities/buying-and-selling-energy/markets-faqs.aspx> (last visited Mar. 22, 2018).

benefits to energy markets and the public at large, including fuel security and diversity, but receive no reliable cost support and, instead, must rely on PJM's power markets which fail to compensate these generators for the full value of the benefits that they provide.<sup>171</sup>

- j) Specific proposals to compensate the supplying "entities" for the emergency services requested and to compensate any transmitting "entities" for services necessary to deliver such power. Applicants propose that, as long as an emergency continues to exist, subject generators and PJM shall operate pursuant to contracts developed and agreed upon by the parties themselves. As explained below, in the event that PJM and the generators are unable to agree to the contractual terms within fifteen (15) days of the issuance of the order, then Applicants request that the Secretary step in and determine the just and reasonable compensation and conditions.
- k) A showing that, to the best of the applicant's knowledge, the requested relief will not unreasonably impair the reliability of any "entity" directly affected by the requested order to render adequate service to its customers. The relief requested by Applicants is to *secure* the reliability of every entity and customer located within PJM's boundaries; no entities are expected to be reasonably or unreasonably impaired by the requested relief. Indeed, the requested relief is designed to enhance the ability of the subject generators and PJM to serve customers.
- l) Description of the facilities to be used to transfer the requested emergency service to the applicant's system. In order to retain the electric generation necessary to prevent and alleviate the emergency, the Secretary's order pursuant to Section 202(c) should apply to nuclear and coal-fired generators located within the PJM footprint that have a supply of fuel on-site sufficient to allow twenty-five (25) days of operation at full output, that are substantially compliant with all applicable federal, state, and local environmental laws and regulations, and that do not recover any of their capital or operating costs through rates regulated by a duly authorized state regulatory authority, municipal government, or energy cooperative. Such generating facilities provide significant benefits to energy markets and the public at large, including fuel security and diversity, but receive no reliable cost support and, instead, must rely on PJM's power markets which fail to compensate these generators for the full value of the benefits that they provide. Attachment A provides a listing of all nuclear and coal-fired generation facilities in PJM but only some of these facilities will likely satisfy the above criteria.
- m) A general or key map on a scale not greater than 100 kilometers to the centimeter showing, in separate colors, the territory serviced by each "entity" named in the application; the location of the facilities to be used for the generation and

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<sup>171</sup> Although PJM's markets fail to adequately compensate nuclear and coal-fired generators for the benefits that they provide, a subset of these generators may nevertheless recover their costs plus an acceptable rate of return through other regulatory mechanisms.

transmission of the requested emergency service; and all connection points between systems. Insofar as this application seeks action by the Secretary regarding all eligible plants in PJM, the type of map specifically requested is not relevant to this application. Nonetheless, Applicants attach as Attachment C a map of the PJM territory, and as Attachment D a map of Applicants' nuclear and coal-fired generating facilities. In addition, attached as Attachment E is a map issued by the PJM Market Monitor showing actual and planned retirements generating units from 2011 through 2020.

- n) An estimate of the construction costs of any proposed temporary facilities and a statement estimating the expected operation and maintenance costs on an annualized basis. Applicants respectfully submit that such information is not applicable to the present application. Due to the nature of Applicants' requested relief, there are no anticipated construction costs, and annualized operation and maintenance costs will remain roughly the same for subject facilities.

#### **F. Requested Order**

Applicants respectfully request that DOE issue an emergency order directing (i) the subject baseload nuclear and coal-fired generators to enter into contracts and all necessary arrangements with PJM, on a plant-by-plant basis, to generate, deliver, interchange, and transmit electric energy, capacity, and ancillary services to maintain fuel diversity and grid dependability and resiliency within the PJM region and (ii) PJM to pay such qualifying generating facilities just and reasonable cost-based rates that provide for full cost recovery consistent with ratemaking standards and principles or as otherwise necessary to ensure continued operations. In addition, the order should direct PJM to begin negotiating immediately with such generators on the terms of such supply.

Applicants respectfully request that each baseload generator eligible to participate—nuclear and coal-fired generators located within the PJM footprint that have a supply of fuel on-site sufficient to allow twenty-five (25) days of operation at full output, that are substantially compliant with all applicable federal, state, and local environmental laws and regulations, and that do not recover any of their capital or operating costs through rates regulated by a duly authorized state regulatory authority, municipal government, or energy cooperative—be compensated with just and reasonable rates that provide for full recovery of its fully allocated costs and a fair return on equity. The compensable costs used to establish this amount shall include, but are not necessarily limited to, operating expenses, costs of capital and debt, and a fair return on equity and investment. Just and reasonable rates shall provide for (a) full cost recovery consistent with ratemaking standards and principles or (b) full recovery of all costs necessary to ensure continued operations.<sup>172</sup> If PJM and the owners are unable to agree to the contractual terms within fifteen

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<sup>172</sup> Certain nuclear and coal-fired units have, for financial reporting purposes, impaired the generating asset values based on the expectation that market revenues would not be sufficient to provide a return of and on invested capital. The fact that these assets were impaired for financial reporting purposes does not change the amount that was invested in the plant nor does it relieve their owners from their obligations to bondholders. As a result, the traditional cost-of-service model needs to be modified to allow cost recovery based on pre-impairment asset

(15) days of the issuance of the order, then Applicants request that the Secretary step in and determine the just and reasonable compensation and conditions.

Applicants request that payments begin on the effective date of each contract, and service under the contracts begin no later than sixteen (16) days after the issuance of the Order. If no agreement as to terms has been reached by this time, then the payment that the eligible generators receive for such service will be subject to true-up based on the just and reasonable rate that is ultimately prescribed.

Applicants request that the order become effective immediately and that, at a minimum, the order should remain in effect for four (4) years from the date of issuance or until the Secretary determines that the emergency has ceased to exist because the PJM markets have been fixed to properly compensate these units for the resiliency and reliability benefits that they provide, whichever is later.<sup>173</sup> Further, because the eligible nuclear and coal-fired generators must continue to substantially comply with all applicable federal, state, and local environmental laws and regulations, the provision in Section 202(c) limiting the duration to a 90-day period is not applicable.<sup>174</sup>

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values or it needs to modified to allow a return on equity on the post-impairment asset value with an additional allowance for recovery of maturing debt in addition to interest expense.

<sup>173</sup> The Secretary has very broad authority to order “temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in [his] judgment will best meet the emergency and serve the public interest.” 16 U.S.C. § 824a(c)(1). As prior 202(c) orders reflect, “temporary” emergencies may vary greatly in length and may even be open ended. Indeed, in *Cross-Sound Cable*, the Secretary initially issued an order with a duration from August 14, 2003 until September 1, 2003, but later extended the order “until such time as the emergency identified in this order cease[d] to exist . . . .” Order No. 202-03-2 (Dep’t of Energy Aug. 28, 2003). In addition, the Secretary’s initial order to Mirant Corporation in 2005 lasted nearly 10 months. Order No. 202-05-3, *D.C. Pub. Serv. Comm’n*, Docket No. EO-05-01, at 10 (Dep’t of Energy Dec. 20, 2005).

<sup>174</sup> See 16 U.S.C. § 824a(c)(4)(A) (limiting the duration of a Section 202(c) order to 90 days if such order “may result in a conflict with a requirement of any Federal, State, or local environmental law or regulation”).



### III. CONCLUSION

The time for talk is over. We find ourselves at a crisis point where significant baseload generation will cease to exist in RTO markets without quick and decisive intervention. Baseload generation does not have the luxury of time; the personal health and safety, economic development, jobs and livelihood of the communities where they are located, as well as our national security, hang in the balance.

It would also be a grave mistake to assume that there is no immediate emergency requiring immediate action now that winter is over. Premature nuclear and coal-fired plant closures know no season—as the announcement yesterday that FirstEnergy Solutions will deactivate over 4,000 MW of nuclear generation shows. The resilience and security of the electric grid can be jeopardized at any moment by any high-impact event—not just those that are weather driven. The health, safety, and welfare of the Nation, as well as our economic and physical well-being must be protected at all times from all potential threats to our electric grid.

As explained herein, Applicants respectfully request that the Secretary utilize the authority granted to DOE under Section 202(c) of the Federal Power Act and immediately issue the emergency order described above. Such quick and decisive intervention is necessary to avoid a crisis point where such baseload generation will cease to exist in RTO markets, and to ensure that nuclear and coal-fired generators operating within PJM are compensated fairly for their costs and the benefits that they provide such that they can continue to operate and ensure a dependable, affordable, safe, secure, and clean supply of electricity.

Respectfully submitted,

/s/ Rick C. Giannantonio

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*Counsel for Applicants*

cc: Bruce J. Walker, Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Patricia A. Hoffman, Principal Deputy Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability

Attachments

### **CERTIFICATE OF SERVICE**

I hereby certify that, in accordance with 10 C.F.R. § 205.372, I have or will shortly cause copies of the foregoing documents to be served on the parties listed below by causing copies of the same to be sent via overnight delivery.

Federal Energy Regulatory Commission  
Delaware Public Service Commission  
Illinois Commerce Commission  
Indiana Utility Regulatory Commission  
Kentucky Public Service Commission  
Maryland Public Service Commission  
Michigan Public Service Commission  
State of New Jersey Board of Public Utilities  
North Carolina Utilities Commission  
Public Utilities Commission of Ohio  
Pennsylvania Public Utilities Commission  
Tennessee Public Utility Commissions  
Commonwealth of Virginia State Corporation Commission  
Public Service Commission of West Virginia  
New York Public Service Commission  
Public Service Commission of the District of Columbia  
PJM Interconnection  
ReliabilityFirst Corp.  
SERC Reliability Corporation  
AES Warrior Run  
Avon Lake  
B L England  
Beaver Valley  
Birchwood Power  
Braidwood Generation Station  
Brandon Shores  
Brunner Island  
Byron Generating Station  
Calvert Cliffs Nuclear Power Plant  
Cardinal  
Chalk Point  
Chambers Cogeneration LP  
Chesterfield  
Cheswick Power Plant  
Clover  
Conemaugh  
Conesville  
Cooper  
Covington Facility  
CP Crane

Davis Besse  
Dickerson  
Donald C Cook  
Dover  
Dresden Generating Station  
East Bend  
Edgembe Genco  
FirstEnergy Bruce Mansfield  
FirstEnergy Fort Martin Power Station  
FirstEnergy Harrison Power Station  
FirstEnergy Pleasants Power Station  
FirstEnergy W H Sammis  
General James M Gavin  
H L Spurlock  
Herbert A Wagner  
Homer City Generating Station  
Indian River Generating Station  
Ingredion Incorporated  
J M Stuart  
James River Genco  
John E Amos  
Joliet 9  
Joliet 29  
Keystone  
Killen Station  
Kincaid  
LaSalle Generating Station  
Limerick  
Logan Generating Company  
Longview Power Plant  
Luke Mill  
Mecklenburg Power Station  
Miami Fort  
Mitchell (WV)  
Morgantown Generating Plant  
Mountaineer  
Mt Storm  
North Anna  
Orrville  
Oyster Creek  
P H Glatfelter  
P H Glatfelter Chillicothe Facility  
Painesville  
Peach Bottom  
Perry  
Powerton

PSEG Hope Creek Generating Station  
PSEG Salem Generating Station  
Quad Cities Generating Station  
Radford Army Ammunition Plant  
Rockport  
Spruance Genco  
Surry  
TalenEnergy Montour  
TalenEnergy Susquehanna  
Tennessee Eastman Operations  
Three Mile Island  
University of Notre Dame  
Virginia City Hybrid Energy Center  
W H Zimmer  
Waukegan  
Wausau Paper Middletown  
Whitewater Valley  
Will County  
Yorktown

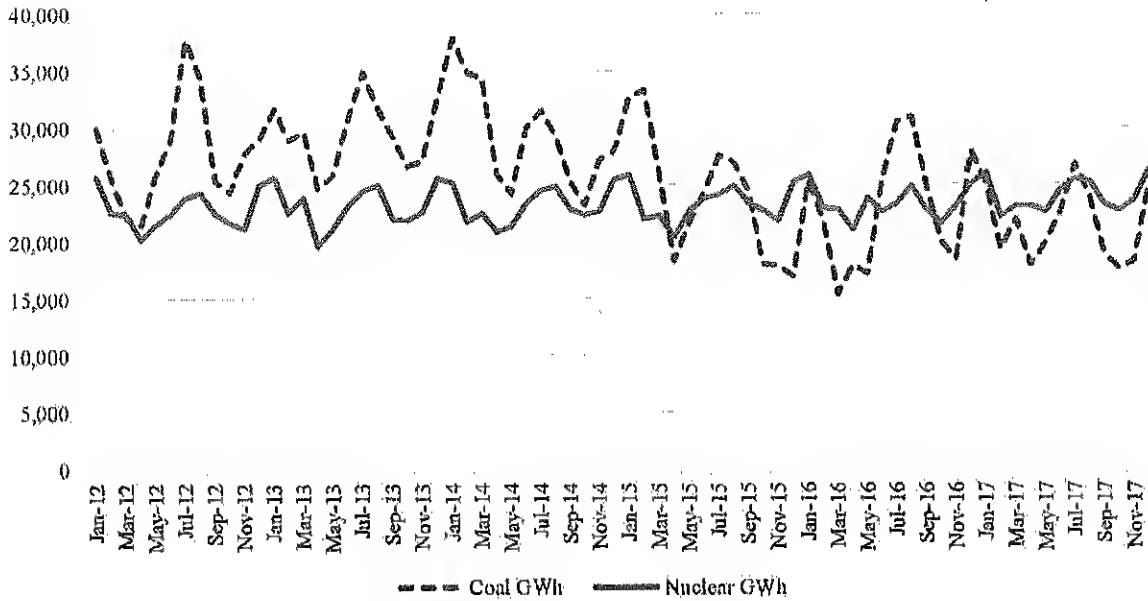
/s/ Christopher Smith  
Christopher Smith  
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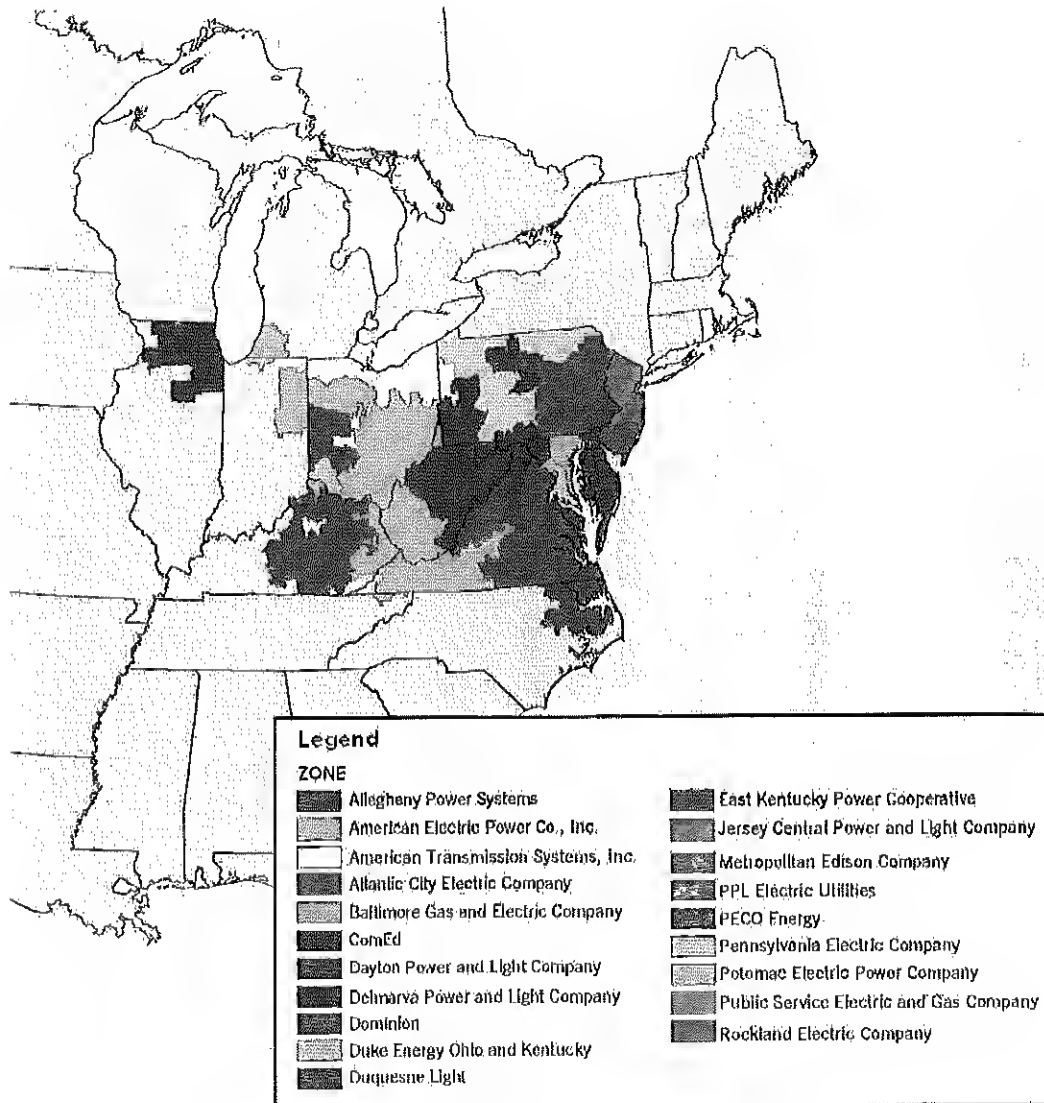
**ATTACHMENT B**  
**OUTPUT OF NUCLEAR AND COAL-FIRED GENERATORS IN PJM**  
**INTERCONNECTION (GWH) (2012–2017)**



Source: Monitoring Analytics LLC, STATE OF THE MARKET REPORTS FOR PJM (2012–2017),  
[http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2017.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml).



**ATTACHMENT C**  
**MAP OF PJM INTERCONNECTION TRANSMISSION ZONES**



Source: PJM, <http://www.pjm.com/library/~media/about-pjm/pjm-zones.ashx>.

ATTACHMENT D  
APPLICANTS' NUCLEAR AND COAL-FIRED GENERATING FACILITIES

Perry Nuclear Power Plant

Davis-Besse  
Nuclear Power Station

PA

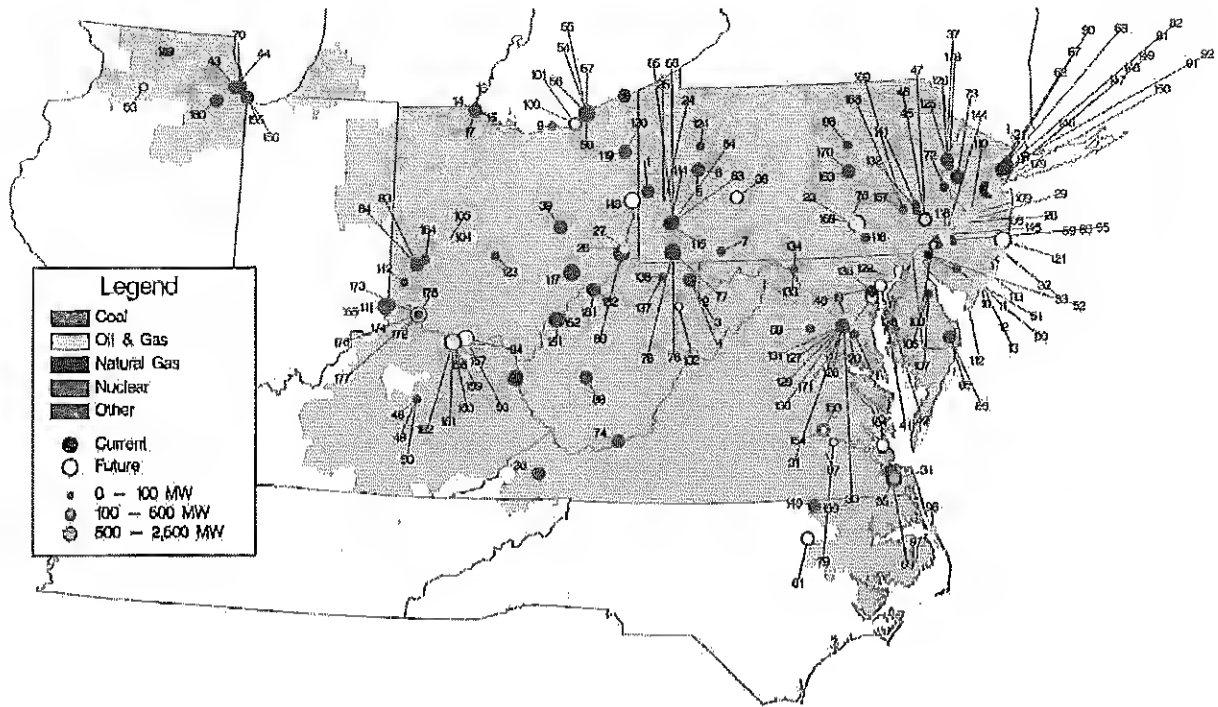
Bruce Mansfield Plant

Beaver Valley Power Station

W.H. Sammis Plant

OH

**ATTACHMENT E**  
**ACTUAL AND PLANNED GENERATION RETIREMENTS IN PJM, 2011-2020**



Key on following page.

Source: Monitoring Analytics LLC, STATE OF THE MARKET REPORT FOR PJM, 2017,  
[http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2017.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml),  
Figure 12-1.

# Unit identification for map of PJM unit retirements, 2011 through 2020

ID	Unit	ID	Unit	ID	Unit	ID	Unit	ID	Unit	ID	Unit
1	AES Beaver Valley	36	Cinch River 3	71	GUDE Landfill	106	McKee 1	141	Rolling Hills Landfill Generator	176	Walter C Beckford S-6
2	Albright 1	37	Columbia Dam Hydro	72	Gilbert 1-4	107	McKee 2	142	SMART Paper	177	Walter C Beckford GT 1-4
3	Albright 2	38	Coker Power Project	73	Glen Osaden 1-8	108	Merced 1	143	Sawmills 1-4	178	Warren County Landfill
4	Albright 3	39	Conestoga 3	74	Glen Lyn S-6	109	Merced 2	144	Schuykill 1	179	Warren 1-4
5	Armstrong 1	40	Crane 1	75	Hanftburg 4 CT	110	Merced 3	145	Schuykill Diesel	180	Wash County 3
6	Armstrong 2	41	Crane 2	76	Hartfield's Ferry 1	111	Merced 4	146	Swanton 1	181	Willow Island 1
7	Arnold (Dixon Mtn. Wind Farm)	42	Crane GT	77	Hartfield's Ferry 2	112	Middle 1-3	147	Swanton 2	182	Willow Island 2
8	Ashland 5	43	Crawford 7	78	Hartfield's Ferry 3	113	Missouri Ave B/C/D	148	Swanton 3	183	Winnebago Landfill
9	Avon Lake 7	44	Crawford 8	79	Hopewell/Jones River Cogeneration	114	Mitchell 2	149	Swanton 4	184	Yorktown 1-2
10	BL England 1	45	Crawford 9	80	Hopewell/Jones River Cogeneration	115	Mitchell 3	150	Swanton 5		
11	BL England 2	46	Crawford 10	81	Hudson 1	116	Modern Power Landfill HUG	151	Spino 1-4		
12	BL England 3	47	Crawford 11	82	Hudson 2	117	Mustangum River 1-5	152	Spino 5		
13	BL England Diesel Units 1-4	48	Dale 1-2	83	Hutchings 1-3, 5-6	118	National Park 1	153	Spencer HUG (Rich 1-2)		
14	Bay Shore 1	49	Dale 3	84	Hutchings 4	119	Niles 1	154	Spencer HUG (Rich 3-4)		
15	Bay Shore 2	50	Dale 4	85	Indian River 1	120	Niles 2	155	State Line 3		
16	Bay Shore 3	51	Deepwater 1	86	Indian River 2	121	Oyster Creek	156	State Line 4		
17	Bay Shore 4	52	Deepwater 2	87	Inglesco Petersburg	122	Perryman 2	157	State 11		
18	Bayonne Cogen Plant (CC)	53	Dixon Lee Landfill Generator	88	Kanawha River 1-2	123	Perryman 5	158	State 12		
19	Beading 15	54	Eastlake 1	89	Kanawha 1-3	124	Piney Creek HUG	159	State 13		
20	Beading 16	55	Eastlake 2	90	Kennedy 10	125	Powder Mill 1	160	State 14		
21	Braden 3	56	Eastlake 3	91	Kenny 11	126	Powder Mill 2	161	State 15		
22	Big Sandy 2	57	Eastlake 4	92	Kenny 12	127	Potomac River 1	162	State 16		
23	Buena Vista Island (Koch)	58	Eastlake 5	93	Kilbuck 2	128	Potomac River 2	163	Sandburg 1-4		
24	Buena Vista Island 1B	59	Eddystone 1	94	Kilbuck CT	129	Potomac River 3	164	Sandburg 5		
25	Buena Vista Island 1C	60	Eddystone 2	95	Kinsky Landfill	130	Potomac River 4	165	Sandburg 6		
26	Buena Vista Island 1D	61	Eddystone 3	96	Kilby Hawk GT 1	131	Potomac River 5	166	Three Lake Island Unit 1		
27	Buena Vista Island 1E	62	Eddystone 4	97	Kilby Hawk GT 2	132	Potomac River 6	167	Titus 1		
28	Buena Vista Island 1F	63	Eddystone 5	98	Koppers Co. IPP	133	R Paul Smith 3	168	Titus 2		
29	Buena Vista Island 1G	64	Eddystone 6	99	Lake Klamath	134	R Paul Smith 4	169	Titus 3		
30	Buena Vista Island 1H	65	Eddystone 7	100	Lake Mead	135	Riverside 4	170	Viking Energy HUG		
31	Buena Vista Island 1I	66	Eddystone 8	101	Lake Mead EMD	136	Riverside 5	171	Wagner 2		
32	Cedar 1	67	Eddystone 9	102	Laud Mountain Battery	137	Riverside 6	172	Walker C Beckford 1		
33	Cedar 2	68	Eddystone 10	103	Madison/Henry Creek Cogeneration	138	Riverside 7	173	Walker C Beckford 2		
34	Chesapeake 1-4	69	Fauquier County Landfill	104	Mad River C/A	139	Riverside 8	174	Walker C Beckford 3		
35	Chesapeake 5-10	70	Fox Street 19	105	Mad River C/B	140	Riverside 9	175	Walker C Beckford 4		

Source: Monitoring Analytics LLC, STATE OF THE MARKET REPORT FOR PJM, 2017,  
[http://www.monitoringanalytics.com/reports/PJM\\_State\\_of\\_the\\_Market/2017.shtml](http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2017.shtml), Table 12-6.

Document 2

March 30, 2018

VIA FACSIMILE

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Re: DOE Docket No. EO-18-\_\_

Dear Secretary Perry:

Please find enclosed the Comments in Support and Motion to Intervene of Allegheny Energy Supply Company, LLC ("AE Supply") in response to the Request for Emergency Order Pursuant to Federal Power Act Section 202(c) submitted March 29, 2018, by FirstEnergy Solutions Corp. ("FES").

Thank you for your attention to this matter. Please direct any questions to the undersigned.

Sincerely,

/s/ James R. Hancy

James R. Hancy

President

Allegheny Energy Supply Company, LLC

cc: Bruce J. Walker, Assistant Secretary, DOE OEDER  
Patricia A. Hoffman, Principal Deputy Assistant Secretary, DOE OEDER  
Rick C. Giannantonio, General Counsel, FirstEnergy Solutions Corp.

Enclosure

**IN THE UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF ENERGY**

Request for Emergency Order Pursuant to )  
Federal Power Act Section 202(c) of )  
FirstEnergy Solutions Corp. )

Docket No. EO-18-\_\_

**COMMENTS IN SUPPORT AND MOTION TO INTERVENE  
OF ALLEGHENY ENERGY SUPPLY COMPANY, LLC**

Allegheny Energy Supply Company, LLC ("AE Supply") files these Comments in support of the "Request for Emergency Order Pursuant to Federal Power Act Section 202(c)" submitted March 29, 2018, by FirstEnergy Solutions Corp. (the "FES Application").<sup>1</sup> As detailed herein, AE Supply supports the FES Application and respectfully asks the Secretary of Energy ("Secretary") to exercise his authority under Section 202(c) of the Federal Power Act<sup>2</sup> to grant the requested relief as soon as possible. In addition, as set forth in Section 2 below, AE Supply respectfully moves to intervene in this proceeding and asks that it be permitted to participate fully as an interested party thereto.<sup>3</sup>

**1. COMMENTS IN SUPPORT**

AE Supply respectfully asks the Secretary to promptly grant the FES Application. As established by the FES Application, an emergency exists in PJM Interconnection L.L.C. ("PJM") within the meaning of Section 202(c) that warrants immediate and decisive action by the Secretary. Yet, as explained by FES:

PJM has done little to prevent this emergency despite the numerous signs for many years that the emergency was coming. Nuclear and

<sup>1</sup> FirstEnergy Solutions Corp. et al., Request for Emergency Order Pursuant to Federal Power Act Section 202(c), DOE Docket No. EO-18-\_\_ (Mar. 29, 2018) ("FES Application").

<sup>2</sup> 16 U.S.C. § 824a(c).

<sup>3</sup> See 10 C.F.R. § 205.370 ("Requests for action under these regulations will be accepted from any 'entity,' State Public Utility Commission, State Energy Agency, or State Governor.") (emphasis added). Allegheny Energy is an "entity" as that term is used in this regulation. See *id.*

(Cont'd on next page)

coal-fired generators in PJM have been closing at a rapid rate—putting PJM's system resiliency at risk—and many more closures have been announced. PJM continues to claim that all is well with its system, but at the same time shows it does not have a clear view of what resilience is, how to measure it, or how to ensure it. PJM has demonstrated little urgency to remedy this problem any time soon—so immediate action by the Secretary is needed to alleviate the present emergency.<sup>4</sup>

AE Supply is the owner of the 1,368 MW Pleasants Power Station located in Willow Island, WV. The Pleasants Power Station sells all of its output into the PJM markets and thus depends entirely on these markets to compensate it for its costs.

But these markets consistently fail to compensate baseload nuclear and coal-fired generators such as the Pleasants Power Station for the value they provide in terms of fuel security, reliability, and resiliency to the electric grid. As the Secretary has recognized, “[b]ecause wholesale pricing in . . . markets [overseen by the Federal Energy Regulatory Commission] does not adequately consider or accurately value those benefits, generation units that provide the benefits are often not fully compensated for them.”<sup>5</sup> A recent DOE study similarly summarized the problem as follows: “Markets do not currently compensate resilience, and thus that capability is steadily diminishing due to competitive pressures of ongoing, baseload power plant early retirements.”<sup>6</sup>

This lack of appropriate compensation has resulted in *AE Supply providing official notice to PJM last month of its intent to deactivate its Pleasants Power Station by year end*. Such a

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<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> Letter from Rick Perry, U.S. Sec’y of Energy, to Chairman & Comm’rs of FERC at 3 (Sept. 28, 2017).

<sup>6</sup> NAT’L ENERGY TECH. LAB., RELIABILITY, RESILIENCE AND THE ONCOMING WAVE OF RETIRING BASELOAD UNITS VOLUME I: THE CRITICAL ROLE OF THERMAL UNITS DURING EXTREME WEATHER EVENTS 3 (Mar. 13, 2018) (“NETL Report”), available at <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>.

(Cont’d on next page)

shutdown will have a severe adverse impact on the State of West Virginia and its citizens as it provides \$400 million in annual economic impact to West Virginia, and supports 600 direct and indirect jobs.<sup>7</sup>

But these problems are in no way limited to the Pleasants Power Station. Rather, numerous baseload plants in PJM have announced that they are financially challenged and are closing or contemplating closure:

- It is a matter of public record that AE Supply's affiliate FirstEnergy Solutions Corp., which indirectly owns 12,300 MW of generation, likely will file for bankruptcy by the end of March 2018.<sup>8</sup> Multiple plants are at risk for permanent closure as a result of this expected action.<sup>9</sup>
  - FirstEnergy Solutions submitted notices to PJM on March 28, 2018, that it would deactivate its three nuclear plants, Davis-Besse (908 MW), Perry (1,268 MW), and Beaver Valley (1,872 MW), by 2021.
  - FirstEnergy Corp. announced that Units 5-7 at the W.H. Sammis coal-fired plant (1,490 MW) are in danger of being closed. The company previously announced that Units 1-4 (720 MW) will close by May 2020.
  - FirstEnergy Corp. has announced that the 2,510 MW Bruce Mansfield coal-fired plant is at risk of closure due to the exposure to changing market conditions.
- Dayton Power & Light has announced the closure by June 2018 of the J.M. Stuart coal-fired plant (2,318 MW) and the Killen Station Unit 2 coal-fired plant (600 MW), citing market conditions making the plants not economically viable; Stuart Unit 1 was closed even earlier, on September 30, 2017.
- Owners of the 1,884 MW Homer City coal-fired power plant attempted to sell the plant in 2016, but were unable to find a buyer; Standard & Poor's analysts cite lower power prices and increasing expenses as driving forces behind the facility's ills.

<sup>7</sup> W. Va Pub. Serv. Comm'n, Initial Brief of Monongahela Power Company and The Potomac Edison Company at 2, Case No. 17-0296-B-PC (Oct. 19, 2017).

<sup>8</sup> Gavin Bade, *FirstEnergy CEO Says Generation Subsidiary Headed for Bankruptcy Protection*, UTILITY DIVE (Feb. 23, 2018), <https://www.utilitydive.com/news/firstenergy-ceo-says-generation-subsidiary-headed-for-bankruptcy-protection/517743/>; Jeffrey Ryser, *FirstEnergy Continues Push Away from Competitive Generation Subsidiary*, PLATTS MEGAWATT DAILY (Feb. 22, 2018).

<sup>9</sup> See FES Application at 20-22.



- Exelon has announced that it will close the Oyster Creek nuclear plant (608 MW) in October 2018—a decade before the end of its operating license—citing negative economic factors.
- Exelon has announced the premature closure of the 837 MW Three Mile Island nuclear power plant in September 2019, citing deteriorating economic value.

But these and other baseload nuclear and coal-fired power plants are an integral part of the PJM electric grid and their loss must stop immediately in PJM or the grid will be placed at risk of failure through a lack of generation diversity and over-reliance on generating units that lack secure fuel supply. Such generating units with on-site fuel kept PJM from shedding load during the 2014 Polar Vortex when available generating capacity was only a hair's width more than demand. And such units were critical to keeping the grid supplied during the severe cold weather in the East this past winter.

Indeed, the cold weather in the East from December 27, 2017, through January 8, 2018, provided a real-time, real-life demonstration as to why immediate action is so critical to ensure the health and safety of the Nation. During that period, the eastern U.S. saw extremely cold temperatures and spiking electric demand, but nuclear and coal-fired generators rose to the task and supplied an exceptional amount of the energy needed to meet this demand. The Pleasants Power Station was no exception, having operated near full capacity during the entire period of December 27, 2017, to January 8, 2018, and even delayed a maintenance outage planned for the last week of the year so that it could run during this time of severe need.

If not for the over-performing nuclear and coal-fired generating plants in PJM,<sup>10</sup> the eastern portion of the country would likely have seen grid reliability impacts, as natural gas plants significantly underperformed in large part due to natural gas price spikes and supply

<sup>10</sup> See FES Application at 3-4 n.17.

(Cont'd on next page)

interruptions.<sup>11</sup> As the recent DOE study of this cold weather event found, nuclear and coal-fired generation provided 70 percent of output during the event and “coal units in PJM were uniquely positioned to provide the resilience needed at this critical point in time,” providing “74 percent of incremental energy.”<sup>12</sup> The study went on to conclude that:

*In the case of PJM, it can also be shown that the demand could not have been met without coal. At peak demand, January 5, 2018, natural gas prices exceeded \$95/MMBtu in eastern PJM. Had coal been removed, a 9-18 GW capacity shortfall would have developed, depending on assumed imports and generation outages, leading to system collapse.<sup>13</sup>*

But the tangible and important benefits that Pleasants and other coal-fired generators provided will not be available the next time demand spikes or natural gas supply experiences disruptions if the current trend of premature, economic retirement of coal-fired generating facilities continues. The DOE’s Energy Information Administration “projects 41 GW of coal and 10 GW of nuclear retirements by 2025,” but this projection does not “adequately capture[] the risk” of retirements.<sup>14</sup> The recent DOE study further projects that “as much as 75 GW of coal[-fired generation] could be retired” by 2025, and notes that another source estimates between “30 [and] 50 GW of nuclear could face retirement.”<sup>15</sup> Without these plants, thousands if not millions of customers could have been without power during this recent weather event.

Unless immediate and decisive action is taken by the Secretary, these retirements will place the electric grid at risk of failure through a lack of generation diversity and over-reliance on generating units—such as those fueled by natural-gas and renewable resources—that lack secure

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<sup>11</sup> See *id.* at 4 n.18.

<sup>12</sup> NETL Report at 12.

<sup>13</sup> *Id.* at 17 (emphasis added).

<sup>14</sup> *Id.* at 25.

<sup>15</sup> *Id.* at 30.

fuel supply. There is a place of course for natural gas and renewable generation, but over-reliance on such resources will place the grid at risk of failure. As the Secretary stated recently, "America's greatness depends on a reliable, resilient electric grid powered by an 'all of the above' mix of generation resources" that "must include traditional baseload generation with on-site fuel storage that can withstand major fuel supply disruptions caused by natural and man-made disasters."<sup>16</sup> Indeed, "[o]ur economy, government and national defense all depend on electricity. Therefore, ensuring a reliable and resilient electric supply and corresponding supply chain are vital to national security."<sup>17</sup>

Nuclear and coal-fired generation are an integral part of that supply chain and immediate action by the Secretary is needed to ensure that they remain so. Accordingly, AE Supply urges the Secretary to grant the FES Application as soon as possible.

## 2. MOTION TO INTERVENE

AE Supply respectfully moves to intervene in this proceeding and be permitted to participate fully as a interested party thereto. As described above, AE Supply owns and operates Pleasants, an at-risk, merchant coal-fired generating facility in the PJM footprint that falls within the scope of facilities for which the FES Application seeks an emergency order by the Secretary pursuant to Section 202(c) of the Federal Power Act to remain operational and not shut down. Accordingly, AE Supply has an immediate and direct interest in this proceeding that cannot be adequately represented by any other person, party, or entity. Thus, AE Supply respectfully moves to intervene in this proceeding and be permitted to participate fully as an interested party thereto.

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<sup>16</sup> Letter from Rick Perry, U.S. Sec'y of Energy, to Chairman & Comm'rs of FERC at 1 (Sept. 28, 2017).

<sup>17</sup> *Id.* at 2.

### 3. CONCLUSION

WHEREFORE, for the foregoing reasons, AE Supply: (a) respectfully requests that the Secretary grant FES' request for an emergency order and (b) moves to intervene in this proceeding and be permitted to participate fully as an interested party thereto.

Respectfully submitted,

/s/ James R. Haney

James R. Haney

President

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jhaney@firstenergycorp.com

Dated: March 30, 2018

**Johnsen, Steven (MA)**

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**From:** Andrew McKusick (b) (6)  
**Sent:** Friday, March 30, 2018 12:44 PM  
**To:** Secretary Perry  
**Subject:** Re: FirstEnergy Corp. Petition to Pres. Trump

103 MAR 30 PM 12:52

I am in favor of Federal Government assistance to FirstEnergy Corporation to keep their nuclear and coal-fired power plants running. Specifically, "It asks the Energy Department to use the Federal Power Act to force PJM Interconnection LLC to enter contracts with nuclear and coal-fired plants across the PJM territory." (WSJ)

Andrew McKusick, RPh  
(b) (6)



March 30, 2018

Via Electronic Mail

Hon. Rick Perry  
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Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

On behalf of the Environmental Defense Fund ("EDF") and the Natural Resources Defense Council ("NRDC"), we write to object to First Energy Solutions Corp.'s request for an emergency order under section 202(c) of the Federal Power Act. NRDC and EDF are national environmental advocacy organizations with millions of members and activists across the country, including in Ohio and the PJM service territory who would be harmed by the costs and environmental and public health impacts of such an order.

On March 29, 2018, FirstEnergy Solutions Corp. ("FirstEnergy" or "FES") formally requested a section 202(c) of the Federal Power Act ("FPA") emergency order.<sup>1</sup> FES requests that all merchant coal and nuclear generating units in the PJM Interconnection ("PJM") footprint (all or parts of 13 states and Washington D.C.) with at least 25 days of onsite fuel be provided non-market, cost-of-service rates and guaranteed profits for at least four years (the "profit guarantee request"). FirstEnergy argues that its profit guarantee request is necessary to ensure resilience, despite the Federal Energy Regulatory Commission ("FERC") recently dismissing this same issue and proposal, finding that "the extensive comments submitted by the RTOs/ISOs do not point to any past or planned generator retirements that may be a threat to grid resilience."<sup>2</sup> PJM's has reaffirmed this finding recently, stating in response to FES's request that "[t]his is not an issue of reliability. There is no immediate emergency,"<sup>3</sup> and that "[n]othing we have seen suggests there is any kind of emergency from these units retiring."<sup>4</sup>

FES's profit guarantee request suffers from already examined and dismissed errors and fundamental deficiencies. Namely, the request: (1) is premised on legal flaws; (2) ignores prior and current FERC activity and finding; (3) would impose enormous cost upon American homes and businesses without benefit; and (4) undermine the competitive marketplace. For these reasons, EDF and NRDC agree with the assessments of others, including Sierra Club, the Advanced Energy Economy, the American Council on Renewable Energy, the American Forest & Paper Association, the American Petroleum Institute, the American Wind Energy Association, the Electric Power Supply Association, the Electricity Consumers Resource Council, the Independent Petroleum Association of America, the Interstate Natural Gas Association of

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<sup>1</sup> Letter from FirstEnergy Solutions Corporation to the Honorable James Richard Perry (Mar. 29, 2018) (hereinafter "FirstEnergy").

<sup>2</sup> *Grid Reliability and Resilience Pricing*, 162 FERC ¶161,012, at P 15 (2018), FERC Docket RM18-1-000 at paragraph 15. Both the FirstEnergy profit guarantee request and proposal at issue before FERC in RM18-1 centered upon an out-of-market cost-of-service plus profit guarantee for resources with onsite fuel, a condition only coal and nuclear assets are able to meet. Both proposals likewise based the rationale for the guarantee on a need to ensure grid resilience. FirstEnergy's profit guarantee request departs from that at issue in RM18-1 by requesting action only on assets in the PJM footprint (rather than in other RTO/ISOs with capacity markets) and by reducing the onsite fuel requirement to 25 days (rather than 90 days).

<sup>3</sup> PJM Statement and Letter to U.S. DOE Secretary Perry.

<sup>4</sup> Scott DiSavino & Valerie Volcovici, *FirstEnergy seeks emergency lifeline for U.S. nuclear, coal plants*, REUTERS (Mar. 29, 2018, 12:10 PM), <https://www.reuters.com/article/us-firstenergy-nuclear-coal/firstenergy-seeks-emergency-lifeline-for-u-s-nuclear-coal-plants-idUSKBN1H52ET> (quoting PJM's Senior Vice President Vincent Duane).

America, the Natural Gas Supply Association, the Solar Energy Industries Association, and PJM, that FirstEnergy's request is problematic and flawed.<sup>5</sup>

EDF and NRDC therefore urge the Department to reject FirstEnergy's profit guarantee request.

**1. PJM is not facing an emergency and FES's attempt to use Section 202(c) is unlawful.**

Section 202(c) expressly is limited to "emergencies" or other "sudden" events.<sup>6</sup> The Department acknowledges on its own website that Section 202(c) only enables it to impose temporary measures due to an "emergency" or other "sudden" circumstance.<sup>7</sup> While Section 202(c) does not define either "emergency" or "sudden," the dictionary definitions of these words reinforce that they mean an imminent crisis that is often unexpected.<sup>8</sup>

The so-called "emergency" that FES raises in its profit guarantee request is nothing of the sort. The nuclear facility closures upon which FES primarily relies are scheduled to retire 2-3 years from now.<sup>9</sup> The other examples are no more convincing. First, FES cites facilities that *may* retire<sup>10</sup>—a mere possibility does not rise to an imminent crisis. Second, FES cites facilities that retired in 2017 or announced their future retirement in March 2017. What FES ignores is that in June 2017, PJM *itself* sought Section 202(c) authority to keep the Yorktown coal-fired units

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<sup>5</sup> See <https://epsa.org/wp-content/uploads/2018/03/FINAL-request-for-comment-period-on-FES-202c-filing.pdf>; See [https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/2018.03.30\\_Sierra%20Club%20letter%20to%20DOE.pdf](https://www.sierraclub.org/sites/www.sierraclub.org/files/blog/2018.03.30_Sierra%20Club%20letter%20to%20DOE.pdf).

<sup>6</sup> 16 U.S.C. § 824a(c)(1).

<sup>7</sup> "DOE's Use of Federal Power Act Emergency Authority," DOE, <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/other-regulatory-efforts/does-use>.

<sup>8</sup> See "Emergency," BLACK'S LAW DICTIONARY 2d Ed., <https://thelawdictionary.org/emergency/> ("Situation requiring immediate attention and remedial action. Involves injury, loss of life, damage to property, or catastrophic interference with the [sic] normal activities. A sudden, unexpected, or impending situation"); "Sudden," OXFORD ENGLISH DICTIONARY ONLINE, <https://en.oxforddictionaries.com/definition/sudden> ("Occurring or done quickly and unexpectedly or without warning.").

<sup>9</sup> FirstEnergy at 8, 20 (noting that Davis-Besse, Perry, and Beaver Valley are scheduled to retire in 2020 or 2021).

<sup>10</sup> *Id.* at 21 (noting that units at the W.H. Sammis coal-fired plant "are in danger of being closed.")



online,<sup>11</sup> and yet it did not feel compelled to file a similar request here or for the incidents cited by FES. This is likely because it, too, recognizes that there is no “emergency” or “sudden” event requiring a handout to coal and nuclear generation. As noted by PJM:

PJM does not believe that operating outside of the market to preserve a particular class or type of generation is needed at this time for reliability. The markets have been resilient in attracting new investment. In addition, a variety of tools exist as a backstop should specific generation be needed in a particular area.<sup>12</sup>

While FES selectively quotes PJM’s assertions about the role coal and nuclear generation played during recent weather events in an effort to support its facilities’ necessity,<sup>13</sup> PJM’s comments only reinforce the lack of “emergency” present here, given that, notwithstanding these assertions, PJM has not deemed the FES closures to be an “emergency” requiring Section 202(c) action.<sup>14</sup> FES also ignores PJM’s statements that its “operations and planning processes [have] ensure[d] margins on the system [that] are robust enough to operate through extreme weather scenarios.”<sup>15</sup>

Case law further supports that FES’s profit guarantee request does not identify a basis for an “emergency” under Section 202(c). For example, in *Richmond Power & Light v. FERC*, in response to the 1973 oil embargo, the Commission chose not to invoke its emergency authority, despite concerns of “dire oil shortfalls.”<sup>16</sup> As noted by the D.C. Circuit in upholding the Commission’s decision:

We are fully mindful, of course, that current national policy is to discourage reliance on foreign oil, but we cannot fault the Commission for reading Section

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<sup>11</sup> DOE, Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017, at <https://www.energy.gov/oe/downloads/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017-0>.

<sup>12</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

<sup>13</sup> FirstEnergy at 6 (citing PJM’s President Andrew Ott).

<sup>14</sup> DiSavino & Volcovici, *supra* note 4 (“PJM, in response, rejected the need for an emergency order.”)

<sup>15</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

<sup>16</sup> *Richmond Power & Light v. FERC*, 574 F.2d 610, 613 (D.C. Cir. 1977).

202(c) as devoid of a solution. *That section speaks of ‘temporary’ emergencies, epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply and not at those in which supply is adequate but a means of fueling its production is in disfavor.*<sup>17</sup>

The situation described in *Richmond Power & Light* is precisely the type of situation at issue here: inefficient and old coal and nuclear generation are now uneconomic in PJM’s competitive markets and PJM and FERC repeatedly have confirmed that there is not a reliability crisis. As stated by PJM, FirstEnergy’s profit guarantee request is not based on an emergency nor reliability or resilience crisis and instead “fundamentally a corporate issue.”<sup>18</sup> FES’s interest in a bailout for coal and nuclear generation, particularly its own, is not basis for a Section 202(c) order.

## **2. FirstEnergy seeks to undermine the recent FERC decision and ongoing FERC resilience docket**

FirstEnergy’s profit guarantee request substantially mirrors the Grid Resiliency Pricing proposal that FERC unanimously rejected less than three months ago, finding there was no urgent threat to the grid’s reliability.<sup>19</sup>

Like that proposal, the FirstEnergy profit guarantee request asks for utility customers to pay above-market “cost-of-service” rates (including a guaranteed profit) to owners of all merchant coal and nuclear generating units with a certain amount of on-site fuel on the theory that those assets are necessary for resilience.

FirstEnergy’s rationale and favored outcome has been rejected. FirstEnergy had opportunity to ask for the reconsideration it seeks now before DOE, but declined to request rehearing at FERC on its January 8 order rejecting the Grid Resiliency Pricing proposal. Instead, FirstEnergy seeks to re-litigate the same issues at DOE without confronting the large body of record evidence amassed at FERC from industry, experts, RTOs and ISOs, states, and other stakeholders demonstrating that the relief FES requests is unnecessary and unrelated for reliability or resilience and would result in unjust and unreasonable rates as well as undue discrimination.

Although FERC found no urgent threat to the grid’s reliability to justify the extraordinary action proposes again now, it did initiate an administrative proceeding to better define and

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<sup>17</sup> *Id.* at 615 (emphasis added) (internal citations omitted).

<sup>18</sup> <https://www.reuters.com/article/us-firstenergy-nuclear-coal/firstenergy-seeks-emergency-lifeline-for-u-s-nuclear-coal-plants-idUSKBN1H52ET>.

<sup>19</sup> Reliability and Resilience Pricing, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (Jan. 8, 2018).

understand resilience and determine whether additional steps are needed to ensure resilience.<sup>20</sup> FirstEnergy attempts to side-step and undermine that proceeding with its request to DOE.

Rather than confront the voluminous evidence and analysis presented before FERC, FirstEnergy relies primarily on a recently released National Energy Technology Laboratory report (“NETL Report”) that incorrectly concludes that power plants with onsite fuel were critical to preserving “resiliency” during the “Bomb Cyclone” in late December to early January.<sup>21</sup> The NETL Report departs from the majority of studies on the subject. This departure is primarily due to a misinterpretation embedded in the report: that the fact that coal generation increased more in comparison to other forms of generation during stressful winter events was a sign that coal provided resiliency. The actual explanation is far simpler: there are many coal units that are rarely used due to their high-cost, and thus those coal plants are only used when demand is far higher than usual.<sup>22</sup> This fundamental mistake is directly attributable to the fact that the report does not rigorously define or measure resilience.<sup>23</sup> In contrast, PJM’s analysis of its systems performance during that weather event shows that there is no looming “resiliency” crisis.<sup>24</sup>

In fact, coal and nuclear don’t provide many of the reliability services the grid needs. Many types of generators far outperform coal and nuclear generators in their capability to provide

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<sup>20</sup> Jan. 8 Order at 17-20.

<sup>21</sup> FirstEnergy Request at 3-8, citing National Energy Technology Laboratory, Reliability, Resilience, and the Coming Wave of Retiring Baseload Units Volume I: The Critical Role of Thermal Units During Extreme Weather Events (Mar. 13, 2018) (“NETL Report”), available at <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>

<sup>22</sup> Michael Goggin, Fossil Lab Misses Mark in Cold Weather “Resilience” Report, (Mar. 28, 2018), available at <http://sustainableferc.org/fossil-lab-misses-mark-in-cold-weather-resilience-report/>.

<sup>23</sup> <https://www.nrdc.org/experts/jennifer-chen/whats-resilience-doe-should-know-spending-your-mone>.

<sup>24</sup> PJM Interconnection, PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018 (Feb. 26, 2018), available at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20180226-january-2018-cold-weather-event-report.ashx>. PJM has also noted that it had 5,400 MWs of emergency demand response available during the Bomb Cyclone that it did not end up needing to utilize. U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Lisa Murkowski (Jan. 23, 2018).

services like flexibility, frequency regulation, and primary frequency response, as noted in a PJM chart included in DOE's August 2017 Staff Report.<sup>25</sup>

PJM likewise disagrees with FES's position, stating that: "This is not an issue of reliability. There is no immediate emergency." ... "Diversity of the fuel supply is important, but the PJM system has adequate power supplies and healthy reserves in operation today, and resources are more diverse than they have ever been. Nothing we have seen to date indicates that an emergency would result from the generator retirements. The potential for the retirements has been discussed publicly for some time. In anticipation, PJM took a preliminary look at the effect of the retirements on the system. We found that the system would remain reliable. We have adequate amounts of generation available."<sup>26</sup>

### **3. FirstEnergy Seeks to Impose Enormous Cost Upon the American Public**

FirstEnergy seeks compensation for "operating expenses, costs of capital and debt, and a fair return on equity and investment." It specifically seeks cost and profit guarantees antithetical to how markets operate, with "full cost recovery consistent with ratemaking standards and principles or...full recovery of all costs necessary to ensure continued operations." FirstEnergy does not estimate in its application the amount of money it requests DOE take from the ratepayer and give to uneconomic coal and nuclear plants in PJM. However, because the profit guarantee request mirrors the already examined and denied proposal at issue before FERC in RM18-1-000, rough estimates are available.

Independent analysis found that guaranteeing costs and profits to coal and nuclear assets would potentially increase costs on consumers and businesses in PJM's retail choice states by \$8.1 billion annually, a roughly 19% increase in total costs.<sup>27</sup>

### **4. FirstEnergy Seeks to Undermine Competitive Markets**

FirstEnergy's profit guarantee request asks that coal and nuclear plants in PJM be provided a non-market cost-of-service plus profit rate. This rate would be substantially higher than what a competitive marketplace provides. Higher prices are inherent to the profit guarantee request; as FirstEnergy previously explained in 2011, "competition is the best way to offer lower

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[https://www.energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability\\_0.pdf](https://www.energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf) at 86.

<sup>26</sup> <https://www.rtoinsider.com/pjm-ferc-resilience-rick-perry-first-energy-89464/>

<sup>27</sup> [http://energyinnovation.org/wp-content/uploads/2017/12/20171025\\_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf](http://energyinnovation.org/wp-content/uploads/2017/12/20171025_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf) at 4-S.

generation prices to customers, increased productivity and efficiencies from existing generating facilities, provide the appropriate market signals regarding the need for new generation, and promote jobs and economic growth.”<sup>28</sup>

Although FirstEnergy no longer agrees with its own statement, FERC continues to favor competitive marketplaces to ensure a reliable, resilient electric grid at just and reasonable rates on the basis of “substantial and well-documented economic benefits that these markets provide to consumers.”<sup>29</sup> By seeking out-of-market profit guarantees for an entire class of resources throughout PJM’s territory, FirstEnergy strikes at the core of FERC’s statutory mission and mandate by seeking to substantially (if not fatally) impair competitive wholesale markets. Such a sweeping refutation of competitive markets would not only undermine a policy meant to protect the public interest but also the investment decisions made throughout the energy sector.

FirstEnergy’s profit guarantee request suggests that it no longer believes in competitive markets, citing to already raised and denied argument.<sup>30</sup> FirstEnergy’s assertion to this effect, as described above, has thus already been heard, considered, and found to be inaccurate. Improvements to wholesale markets are possible, but generally over-, not under-procurement has been consistently observed.<sup>31</sup> Nor does FirstEnergy’s repeated request suggest that market structures are so fundamentally flawed that FERC’s reliance upon markets is misplaced; indeed, “[a]s part of its ongoing oversight of wholesale electric markets, the Commission continues to evaluate its current rules and has issued several orders to ensure that our rates in our markets remain just and reasonable and not unduly discriminatory or preferential.”<sup>32</sup> Because of this, “[t]he Commission’s endorsement of markets does not conflict with its oversight of reliability, and the Commission has been able to focus on both without compromising its commitment to either.”<sup>33</sup>

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<sup>28</sup> <https://seekingalpha.com/article/284013-firstenergys-ceo-discusses-q2-2011-results-earnings-call-transcript?page=2>.

<sup>29</sup> RM18-1 at paragraph 11.

<sup>30</sup> FirstEnergy at 8, “‘Distorted price signals’ in the organized markets overseen by [FERC], such as PJM, ‘have resulted in under-valuation of grid reliability and resiliency benefits provided by traditional baseload resources, such as [those powered by] coal and nuclear’ fuel.”

<sup>31</sup> <https://www.nrdc.org/experts/jennifer-chen/our-grid-needs-go-diet-get-leaner-and-greener>

<sup>32</sup> RM18-1 at paragraph 10.

<sup>33</sup> RM18-1 at paragraph 11.

## 5. Conclusion

For the foregoing reasons, EDF and NRDC ask the Department of Energy to deny the FirstEnergy profit guarantee request.

Sincerely,

/s/ Michael Panfil

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## ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

March 30, 2018

*VIA ELECTRONIC MAIL AND U.S. MAIL*

Hon. Rick Perry  
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Catherine Jereza  
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Dear Secretary Perry and Deputy Assistant Secretary Jereza,

On March 29, 2018, FirstEnergy Solutions Corp. ("FirstEnergy" or "FES") submitted a request for an emergency order pursuant to, *inter alia*, Section 202(c) of the Federal Power Act. FirstEnergy requests an order from the Department of Energy that would require utility customers to pay above-market cost-of-service rates, including a guaranteed profit, for at least four years to owners of merchant coal and nuclear generating units in PJM. FirstEnergy contends that these payments are essential to ensure "resiliency" in the PJM system and avoid an "emergency" under the extraordinary circumstances outlined in Section 202(c). No such emergency exists: FirstEnergy has failed to show that resiliency is at risk, or that its coal and nuclear units—which may be retired over the next seven years—are essential to ensuring such resiliency.

The Environmental Law and Policy Center<sup>1</sup> ("ELPC") has a substantial interest in this matter and would be adversely affected by an order granting FES' Section 202(c) request. ELPC has members throughout the Midwest, including those residing in PJM's service territory. If

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<sup>1</sup> ELPC is a public interest environmental legal advocacy and eco-business innovation organization working throughout the Midwest states to improve environmental quality and protect natural resources in the Midwest on behalf of our organization, members and clients. ELPC works to avoid risks and injuries to public health, clean water, clean air and landscapes in ways that are good for the environment and good for the economy.

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601  
(312) 673-6500 • [www.ELPC.org](http://www.ELPC.org)

Harry Drucker, Chairperson • Howard A. Learner, Executive Director  
Chicago, IL • Columbus, OH • Des Moines, IA • Duluth, MN • Grand Rapids, MI • Indianapolis, IN  
Jamestown, SD • Madison, WI • Minneapolis/St. Paul, MN • Sioux Falls, SD • Washington, D.C.

granted, FES' proposed order would raise electricity bills for these members, directly undermining ELPC's mission to promote affordable clean energy throughout the Midwest. While ELPC reserves the right to expand on its objections to FES' request, the fast track requested by FES merits this immediate response.<sup>2</sup>

First, it is clear that there is no emergency in PJM. PJM is reliable and will remain so for the foreseeable future. FES' allegations of an emergency situation in the PJM market are directly contradicted by PJM itself. As stated by PJM spokeswoman Susan Buehler:

This is not an issue of reliability. There is no immediate emergency. Diversity of the fuel supply is important, but the PJM system has adequate power supplies and healthy reserves in operation today, and resources are more diverse than they have ever been. Nothing we have seen to date indicates that an emergency would result from the generator retirements.<sup>3</sup>

Second, FES blames the market for undercompensating what are, in truth, uneconomical resources. The company's desire to continue operating its nuclear and coal facilities by forcing customers to pay higher prices is not in the national interest – it is in FirstEnergy's interest. The American Petroleum Institute succinctly captured the detrimental impact of FirstEnergy's proposal:

"FirstEnergy needs to stop misleading the public and government officials about the status of its power plants in Ohio and Pennsylvania," said API Market Development Group Director Todd Snitchler (and former chairman of the Public Utilities Commission of Ohio.) "FirstEnergy's latest attempt to spread a false narrative surrounding the reliability of the electric grid is nothing more than a ruse that will force Main Street consumers to pay higher prices."<sup>4</sup>

All available evidence contradicts FirstEnergy's efforts to invent an "emergency" where none exists. PJM is ensuring system reliability and resiliency, and there is no basis for disrupting its system to prop up FirstEnergy's aging nuclear and coal units.

For the foregoing reasons, ELPC respectfully requests that the Department of Energy promptly deny the application of FirstEnergy Solutions for emergency relief under Section 202(c) of the Federal Power Act.

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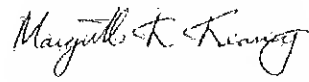
<sup>2</sup> By notifying the Department of its objection to FES' request, ELPC does not waive, and explicitly preserves, any rights before the Department of Energy, the Federal Energy Regulatory Commission, or any other federal agency and in any court with jurisdiction over matters arising from or related to FES's request.

<sup>3</sup> Dan Shingler, *FirstEnergy seeks federal government help for its struggling plants*, CRAIN'S CLEVELAND BUSINESS (March 29, 2018), <http://www.crainscleveland.com/article/20180329/news/156551/firstenergy-seeks-federal-government-help-its-struggling-plants>.

<sup>4</sup> John Funk, *FirstEnergy DOE emergency appeal another ruse for "bailout" say opponents*, CLEVELAND PLAIN DEALER (March 30, 2018), [http://www.cleveland.com/business/index.ssf/2018/03/firstenergy\\_doe\\_emergency\\_appe.html](http://www.cleveland.com/business/index.ssf/2018/03/firstenergy_doe_emergency_appe.html).



Respectfully submitted,



---

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March 30, 2018

**VIA COURIER**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

**Re: Joint Request of the Energy Industry Trade Associations for Notice-and-Comment Procedures Regarding the March 29, 2018 Request of First Energy Solutions for an Emergency Order Pursuant to Section 202(c) of the Federal Power Act**

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Dear Secretary Perry:

The Advanced Energy Economy, the American Council on Renewable Energy, the American Forest & Paper Association, the American Petroleum Institute, the American Wind Energy Association, the Electric Power Supply Association, the Electricity Consumers Resource Council, the Independent Petroleum Association of America, the Interstate Natural Gas Association of America, the Natural Gas Supply Association, and the Solar Energy Industries Association (collectively, "Joint Industry Commenters") hereby respectfully submit this joint request that the Secretary of Energy establish notice-and-comment procedures with respect to the March 29, 2018 request (the "March 29 Request") of FirstEnergy Solutions ("FE Solutions") for issuance of an order pursuant to Section 202(c) of the Federal Power Act (the "FPA").<sup>1</sup> In the March 29 Request, FE Solutions asks the Secretary to require PJM Interconnection, L.L.C. ("PJM") to pay certain nuclear-powered and coal-fired generators "cost-based rates that provide for full cost recovery . . . ."<sup>2</sup> As was well-documented in the recent proceeding before the Federal Energy Regulatory Commission ("FERC") initiated by the Secretary's October 10, 2017 proposed rulemaking on grid resilience pricing,<sup>3</sup> such action would have far reaching implications for the PJM markets and for a broad spectrum of parties, including those represented by the Joint Industry Commenters. It is, therefore, imperative that all stakeholders be afforded notice, and a meaningful opportunity to be heard, before any favorable action is taken on the March 29 Request.<sup>4</sup>

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<sup>1</sup> 16 U.S.C. § 824a(c) (2017).

<sup>2</sup> March 29 Request at 31.

<sup>3</sup> See *Grid Resilience Pricing Rule*, Notice of Proposed Rulemaking, 82 Fed. Reg. 46,940 (Oct. 10, 2017) (the "October 10 NOPR").

<sup>4</sup> Naturally, the Joint Industry Commenters would not object to the Secretary's rejection of the March 29 Request without notice and comment.

The purported problem prompting the March 29 Request is the same one that was the subject of the Secretary's October 10 NOPR.<sup>5</sup> On January 8, 2018, FERC issued an order terminating that rulemaking and initiating a separate proceeding in order "to examine holistically the resilience of the bulk power system."<sup>6</sup> FERC held that none of the participants in the rulemaking, including FE Solutions, which filed extensive comments, had demonstrated that existing tariffs were unjust and unreasonable or that the proposed cost-based rates for select generators were just and reasonable.<sup>7</sup> FERC also relied on "extensive comments" from PJM and other system operators which identified no "past or planned generator retirements that may be a threat to grid resilience."<sup>8</sup> By its March 29 Request, FE Solutions is asking the Secretary to second-guess FERC's expert findings on a record substantially less developed than that in the FERC proceeding. This is particularly problematic where the proposed remedy is concerned, because Section 202(c) of the FPA unambiguously requires that any compensation required by the Secretary be "just and reasonable."<sup>9</sup> FE Solutions is also asking the Secretary to disregard the Department of Energy's own regulations, which clearly state that "economic factors relating to service . . . generally will not be considered as emergencies unless the inability to supply electric service is imminent."<sup>10</sup> As recognized in the FERC proceeding and as discussed below, there is no imminent threat.

Even leaving aside the merits and assuming *arguendo* that the March 29 Request identifies a valid problem, FE Solutions's own conduct in response to the Commission's January 8 Order belies claims that there is any *immediate* problem requiring issuance of an order before affected parties have a meaningful opportunity to be heard. Specifically, FE Solutions did not avail itself of the opportunity to request rehearing of the January 8 Order within the 30 days prescribed by the FPA<sup>11</sup> and waited nearly three months to file the March 29 Request. It would be manifestly unreasonable and unfair to both other interested parties and the Secretary for FE Solutions to demand that the Secretary act without hearing from interested parties, including PJM, after having failed to exercise its right to request rehearing before FERC and waited nearly three months before challenging FERC's order through the March 29 Request to the Secretary.

It is also telling that the most immediate considerations underlying FE Solutions's March 29 Request are that FE Solutions: (1) "likely will file for bankruptcy by the end of March 2018"; and (2) has "already submitted notice to PJM that it would deactivate its nuclear

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<sup>5</sup> See *Grid Resilience Pricing Rule*, Notice of Proposed Rulemaking, 82 Fed. Reg. 46,940 (Oct. 10, 2017).

<sup>6</sup> *Grid Reliability & Resilience Pricing*, 162 FERC ¶ 61,012 at P 1 (2018) (the "January 8 Order").

<sup>7</sup> See *id.* at PP 14-16.

<sup>8</sup> *Id.* at P 15.

<sup>9</sup> 16 U.S.C. § 824a(c) (2012).

<sup>10</sup> 10 C.F.R. § 205.371 (2017).

<sup>11</sup> See 16 U.S.C. § 825l(a) (2012).

The Honorable James Richard Perry  
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assets . . . in 2020 and 2021.”<sup>12</sup> Notwithstanding FE Solutions’s assertions to the contrary, these considerations both underscore the lack of urgency in this case. First, the near-term effect of a bankruptcy filing will be to decrease, not increase, the financial pressures on FE Solutions inasmuch as actions to collect pre-petition debts will be stayed, giving it a “breathing spell” while it reorganizes.<sup>13</sup> While the bankruptcy filing may be an unwelcome event for FE Solutions and its stakeholders, that event only serves to lessen the immediacy of any alleged problem facing society arising from threatened retirements of its facilities. Second, threatened retirements that will not occur until 2020 and 2021 can hardly be said to present an issue so immediate as to justify denying affected parties the opportunity to comment and depriving the Secretary of the benefit of those parties’ input.<sup>14</sup>

For the foregoing reasons, the Joint Industry Commenters respectfully request that the Secretary establish notice-and-comment procedures before taking any favorable action on the March 29 Request. Specifically, the Secretary should provide for publication of a notice of the March 29 Request in the *Federal Register* and establish a comment period of at least 60 days. Such a comment period would be consistent with the requirements of Executive Order 12866, which states that “each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”<sup>15</sup>

Thank you for your consideration of this matter.

Very truly yours,

Greg Wetstone  
President and CEO  
Todd Foley  
Senior Vice President, Policy &  
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<sup>12</sup> See March 29 Request at 8 (footnote omitted).

<sup>13</sup> *In re Robinson*, 764 F.3d 554, 559 (6th Cir. 2014) (quoting H.R.Rep. No. 95–595, at 340 (1978), 1978 U.S.C.C.A.N. 5963, 6297).

<sup>14</sup> FE Solutions also fails to acknowledge that those retirements cannot occur until PJM reviews their potential reliability impacts, and that, to the extent reliability impacts are identified, PJM has authority to take steps to address them.

<sup>15</sup> *Regulatory Planning and Review*, Exec. Order No. 12866, 58 Fed. Reg. 51,735, 1993 WL 13149641, § 6 (Sept. 30, 1993).

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March 30, 2018  
Page 4

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The Honorable James Richard Perry  
March 30, 2018  
Page 5

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cc: Bruce J. Walker, Assistant Secretary, DOE Office of Electric  
Delivery & Energy Reliability  
Patricia A. Hoffman, Principal Deputy Assistant Secretary,  
DOE Office of Electric Delivery & Energy Reliability  
The Honorable Kevin J. McIntyre, Chairman, FERC  
The Honorable Cheryl A. LaFleur, Commissioner, FERC  
The Honorable Neil Chatterjee, Commissioner, FERC  
The Honorable Robert F. Powelson, Commissioner, FERC  
The Honorable Richard Glick, Commissioner, FERC  
The Honorable Kimberly D. Bose, Secretary, FERC

**Johnsen, Steven (MA)**

---

**From:** Secretary Perry  
**Sent:** Friday, March 30, 2018 1:23 PM  
**To:** Johnsen, Steven (MA)  
**Subject:** FW: Group Letter on FES 202(c) Letter  
**Attachments:** FINAL request for comment period on FES 202c filing.pdf; ATT00001.htm

**From:** John E. Shelk [mailto:Jshelk@epsa.org]  
**Sent:** Friday, March 30, 2018 12:31 PM  
**To:** Secretary Perry <The.Secretary@hq.doe.gov>; McCormack, Brian <Brian.Mccormack@hq.doe.gov>; Menezes, Mark <Mark.Menezes@hq.doe.gov>; Walker, Bruce <Bruce.Walker@hq.doe.gov>; Hoffman, Patricia <Pat.Hoffman@hq.doe.gov>; Cade, Steven <Steven.Cade@hq.doe.gov>  
**Subject:** Group Letter on FES 202(c) Letter

Please see attached courtesy copy of letter from 11 organizations to the Secretary as being hand delivered to DOE presently. I was asked to send this to each of you on behalf of the group.

Best,  
John

March 30, 2018

Matthew E. Price  
Tel +1 202 639 6873  
MPrice@jenner.com

VIA COURIER

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

Re: FirstEnergy Solutions Corporation's Request for Emergency Order Pursuant to Federal  
Power Act Section 202(c)

Dear Secretary Perry:

Exelon Corporation ("Exelon") has received an application by FirstEnergy Solutions Corporation for an order pursuant to the emergency provisions of Section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c). The closure of FirstEnergy's three emissions-free nuclear plants will immediately erase the environmental benefits of more than 25 years of wind and solar development in the markets they serve. As the nation's largest producer of emissions-free energy, Exelon urges policymakers to prioritize reforms that fix widely acknowledged market rule flaws that unfairly disadvantage nuclear plants, which are an indispensable component of a resilient and secure electric grid and serve as economic engines for the communities they serve.

We note that PJM's response to the application suggests that traditional reliability analyses can be used to determine whether action by the Department is needed. *See* Letter from Vincent P. Duane to the Honorable James Richard Perry, March 30, 2018. However, both FERC and PJM have acknowledged that traditional reliability analyses do not encompass the resilience of supply. *See Grid Reliability and Resilience Pricing*, 162 FERC ¶ 61,012, at PP 22-24 (2018); Comments and Response of PJM Interconnection, L.L.C., FERC Docket No. AD18-7-000, at 4, 12-14 (March 9, 2018). Therefore, PJM's reliability evaluation is not dispositive of whether action is needed.



Exelon reserves its rights to supplement its response under 10 C.F.R. § 205.374, and provide any other information relevant to the requested action.

Sincerely,



Matthew E. Price  
*Counsel for Exelon Corporation*

cc: Bruce J. Walker, Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability  
Patricia A. Hoffman, Principal Deputy Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability  
FirstEnergy Solutions Corp.  
Federal Energy Regulatory Commission  
Delaware Public Service Commission  
Illinois Commerce Commission  
Indiana Utility Regulatory Commission  
Kentucky Public Service Commission  
Maryland Public Service Commission  
Michigan Public Service Commission  
State of New Jersey Board of Public Utilities  
North Carolina Utilities Commission  
Public Utilities Commission of Ohio  
Pennsylvania Public Utilities Commission  
Tennessee Public Utility Commissions  
Commonwealth of Virginia State Corporation Commission  
Public Service Commission of West Virginia

New York Public Service Commission  
Public Service Commission of the District of Columbia  
PJM Interconnection  
ReliabilityFirst Corp.  
SERC Reliability Corporation  
AES Warrior Run  
Avon Lake  
B L England  
Beaver Valley  
Birchwood Power  
Braidwood Generation Station  
Brandon Shores  
Brunner Island  
Byron Generating Station  
Calvert Cliffs Nuclear Power Plant  
Cardinal  
Chalk Point  
Chambers Cogeneration LP  
Chesterfield  
Cheswick Power Plant  
Clover  
Conemaugh  
Conesville  
Cooper  
Covington Facility  
CP Crane  
Davis Besse  
Dickerson  
Donald C Cook

Dover

Dresden Generating Station

East Bend

Edgecombe Genco

FirstEnergy Bruce Mansfield

FirstEnergy Fort Martin Power Station

FirstEnergy Harrison Power Station

FirstEnergy Pleasants Power Station

FirstEnergy W H Sammis

FirstEnergy Solutions Corp.

General James M Gavin

H L Spurlock

Herbert A Wagner

Homer City Generating Station

Indian River Generating Station

Ingredion Incorporated

J M Stuart

James River Genco

John E Amos

Joliet 9

Joliet 29

Keystone

Killen Station

Kincaid

LaSalle Generating Station

Limerick

Logan Generating Company

Longview Power Plant

Luke Mill

Mecklenburg Power Station  
Miami Fort  
Mitchell (WV)  
Morgantown Generating Plant  
Mountaineer  
Mt Storm  
North Anna  
Orrville  
Oyster Creek  
P H Glatfelter  
P H Glatfelter Chillicothe Facility  
Painesville  
Peach Bottom  
Perry  
Powerton  
PSEG Hope Creek Generating Station  
PSEG Salem Generating Station  
Quad Cities Generating Station  
Radford Army Ammunition Plant  
Rockport  
Spruance Genco  
Surry  
TalenEnergy Montour  
TalenEnergy Susquehanna  
Tennessee Eastman Operations  
Three Mile Island  
University of Notre Dame  
Virginia City Hybrid Energy Center  
W H Zimmer

The Honorable James Richard Perry  
March 30, 2018  
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Waukegan

Wausau Paper Middletown

Whitewater Valley

Will County

Yorktown

# JENNER & BLOCK

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The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

Document 8

March 30, 2018

VIA FACSIMILE

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Request for Emergency Order Pursuant to Federal Power Act Section 202(c)

Dear Secretary Perry:

FirstEnergy Solutions Corp. ("FES"), on behalf of its affiliates named in its March 29, 2018 Section 202(c) application (the "Application"), respectfully responds herein to the March 30, 2018 letter to you from PJM Interconnection, LLC ("PJM") regarding the Application. PJM appears to misunderstand the point of the Application and the action it seeks. Yet, at the same time, PJM's response reinforces the need for the emergency relief requested in it. And perhaps most tellingly, PJM, as it did before FERC, continues to ignore resiliency as a critical and separate component of electric grid security. Indeed, the word resiliency is nowhere even mentioned in its letter.

That PJM misunderstands the thrust of the Application is apparent in how it misstates the basis upon which FES requests the Secretary to act. The immediate emergency is not only the result of any individual plant retiring nor the result of the announced plant retirements of FirstEnergy Solutions' affiliates. The immediate emergency encompasses a far bigger problem that is the result of the combination of numerous plants that have already retired and many more that are likely to do so in the near future resulting in a permanent and irreparable loss of resiliency to the PJM-managed grid. By trying to narrowly frame the problem, PJM continues to assume away the legitimacy of this resiliency crisis.

PJM states that it will evaluate these specific deactivations but its calculus for evaluating the need for plants that have placed deactivation requests is overly narrow and does *not* evaluate resiliency. By its own admission, PJM focuses on "systemic adequacy" (i.e., capacity/load balance) and "local reliability issues, such as insufficient voltage support." In effect, PJM is asking the Secretary defer action on the Application and instead rely on a narrow process run by an entity that has admitted that it does not have a clear view of what resilience is, how to measure it, or how to ensure it.

As the Application explained, the PJM system must also be *resilient* if it is going to satisfy its obligation to maintain service to its customers. PJM fails to even acknowledge the need for system resiliency, let alone explain how it is seeking to maintain it. And insofar as PJM is not addressing the need for resiliency, emergency action by the Secretary is needed to do so.

Like they did before FERC, PJM continues to advocate for delay. Is continues to ask the Secretary (and FERC) to rely and trust its process. FES respectfully submits that allowing PJM

to continue to kick the can down the road is how we have arrived at this crisis. The time for action is now.

Respectfully submitted,

/s/ Rick C. Giannantonio

William S. Scherman  
Jeffrey M. Jakubiak  
Jennifer C. Mansh  
Gibson, Dunn & Crutcher LLP

Rick C. Giannantonio  
General Counsel  
FirstEnergy Solutions Corp.

*Counsel for Applicants*

cc: Bruce J. Walker, Assistant Secretary, DOE OEDER  
Patricia A. Hoffman, Principal Deputy Assistant Secretary, OEDER



**Johnsen, Steven (MA)**

---

**From:** Kim (b) (6)  
**Sent:** Friday, March 30, 2018 1:20 AM  
**To:** Secretary Perry  
**Subject:** Perry Nuclear Power Plant

Mr. Rick Perry.

I am writing to you asking for your help your department and President Thrump to save our Nuclear Power Plant in Perry Ohio. We need our plant (b) (6)

(b) (6) Our communities will suffer if these power plants close up in 2021 .

Our plant FirstEnergy is filling bankruptcy today Friday March 30 the 2018.

Please Help us Mr. Perry save our power plants 750 employees including myself will loose our jobs and medical insurance which we need . I would appreciate anything you and your department can do to save our plants . Thank You.

Gary L. Godfrey  
(b) (6)

*Sent from my Verizon Wireless 4G LTE DROID*

18 MAR 30 AM 8:11

**Johnsen, Steven (MA)**

---

**From:** Secretary Perry  
**Sent:** Friday, March 30, 2018 1:27 PM  
**To:** Johnsen, Steven (MA)  
**Subject:** FW: PJM Response to First Energy March 29 Request to the Secretary for Section 202 (c) Emergency Relief  
**Attachments:** FE Solutions Request for Emergency Relief (W01S3752x8DF47).pdf

**From:** Glazer, Craig [mailto:Craig.Glazer@pjm.com]  
**Sent:** Friday, March 30, 2018 12:09 PM  
**To:** Secretary Perry <The.Secretary@hq.doe.gov>  
**Cc:** Menezes, Mark <Mark.Menezes@hq.doe.gov>; Walker, Bruce <Bruce.Walker@hq.doe.gov>; Cunningham, Sean <Sean.Cunningham@hq.doe.gov>; Hoffman, Patricia <Pat.Hoffman@hq.doe.gov>; Jereza, Catherine <Catherine.Jereza@Hq.Doe.Gov>; Duane, Vincent P. <Vincent.Duane@pjm.com>  
**Subject:** PJM Response to First Energy March 29 Request to the Secretary for Section 202 (c) Emergency Relief

PJM is submitting for the Secretary's consideration the attached letter in response to First Energy's March 29 request for emergency relief. In this response, PJM outlines the process it will be undertaking, consistent with its FERC-approved tariff, to review the reliability impacts from the announced deactivations. Accordingly, PJM requests the Secretary to hold First Energy's request in abeyance so that the Secretary may have the benefit of PJM's analysis of the reliability impacts, if any, associated with the announced deactivations.

Should you have any questions or seek additional information, please contact me at the address below.

**CRAIG GLAZER**

Vice President-Federal Government Policy  
PJM Interconnection, LLC—D.C. Office

Suite 600  
1200 G Street, N.W.  
Washington, D.C. 20005  
(b) (6)  
[Craig.Glazer@PJM.COM](mailto:Craig.Glazer@PJM.COM)



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March 30, 2018

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: FirstEnergy Solutions' Request for Emergency Relief under Section 202 of the Federal Power Act

Dear Secretary Perry:

PJM Interconnection, LLC (PJM) respectfully seeks to submit this response to the above-referenced request filed by FirstEnergy Solutions and affiliates (FES) on March 29, 2018. While the PJM system presently is reliable by all measures, PJM will refrain, at this time, from responding to FES' assertion that an "emergency condition" will arise should certain FES nuclear plants and potentially certain FES coal plants retire in upcoming years as announced or threatened by the company.<sup>1</sup>

PJM will not use this opportunity to express agreement or disagreement with several major points of argument advanced by FES; nor will we correct at this time several misstated facts presented by FES. Instead, PJM simply points out to the Secretary two very obvious and objective facts that relieve the Department from the need to take precipitous, immediate action to address FES' request.

First, whether FES' actions create a reliability concern that may threaten the stable and reliable operation of the grid, much less constitute an emergency within the meaning of Section 202(c) of the Federal Power Act, is a question that will be answered by a proscribed, detailed and regularly employed process found in Part V of the PJM Tariff. Consistent with the PJM Tariff, over the next 30 days, PJM will undertake a thorough analysis of its system to determine whether the announced retirements would present systemic adequacy issues or any local reliability issues, such as insufficient voltage support. Should any such finding result, the PJM Tariff provides an additional 60 days to work with FES and a range of tools available, including ordering transmission system upgrades and, if necessary, offering full cost of service compensation under Part V of the PJM Tariff to induce assets to remain temporarily on-line. Ultimately, PJM could also join FES in its instant request should other remedial options prove insufficient.

Second, PJM can state without reservation there is no immediate threat to system reliability. Indeed, the FES units that announced their expected retirement earlier this week, by their own disclosures, will remain operational in most cases until through May 2021. Moreover, these announcements are not binding – FES

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<sup>1</sup> Curiously, the request purports to seek relief for the entire FES merchant fleet - and somehow on behalf of others - relief for all other coal and nuclear units in PJM, totaling over 80 generation units. PJM will evaluate the question of impaired reliability or an "emergency condition" based on actual facts – announced retirements – not on the company's general dissatisfaction with the PJM markets or its competitive position therein. Nor will PJM evaluate the impact of closure of other companies' plants unless or until owners of such plants raise the matter with PJM.

can elect to rescind this notice, or should assets be sold, a subsequent purchaser likewise may decide to continue to operate the units. But even assuming these units do in fact close as of the dates announced, PJM, FERC, and the Department of Energy will have ample time before then to take measures, which at the extreme might include the kind of relief sought in the Instant request.

PJM therefore respectfully requests that the Secretary allow PJM's FERC-accepted process to unfold in an orderly manner and refrain from taking unnecessary, extraordinary and precedential immediate action as sought by FES. PJM will commit to sharing publicly (to the maximum extent possible), and in any event to the Department of Energy, our findings resulting from our 30-day process for evaluating the system implications of FES' announced retirements.

Thank you for considering PJM's perspective and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent P. Duane", with a stylized flourish at the end.

Vincent P. Duane

cc: Mark Menezes, DOE  
Bruce Walker, DOE  
Sean Cunningham, DOE  
Patricia Hoffman, DOE  
Catherine Jereza, DOE

**Johnsen, Steven (MA)**

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**From:** Bridget Lee <bridget.lee@sierraclub.org>  
**Sent:** Friday, March 30, 2018 9:00 AM  
**To:** Secretary Perry; Jereza, Catherine  
**Cc:** Casey Roberts; Sanjay Narayan; Craig.Glazer@pjm.org; Steven.Pincus@pjm.org  
**Subject:** Sierra Club's response to FirstEnergy request for emergency order  
**Attachments:** 2018.03.30\_Sierra Club letter to DOE.pdf

Mr. Perry and Ms. Jereza,

Attached please find the Sierra Club's response to the request for an emergency order under the Federal Power Act filed yesterday by FirstEnergy Solutions.

Thank you for your time and consideration.

Best regards,

Bridget



**Bridget Lee**  
Staff Attorney  
Environmental Law Program  
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**SIERRA  
CLUB**

March 30, 2018

Via Electronic Mail and U.S. Mail

Hon. Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
The.Secretary@hq.doe.gov

Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
Catherine.Jereza@hq.doe.gov

Dear Mr. Perry and Ms. Jereza:

FirstEnergy Solutions Corp. ("FirstEnergy" or "FES") has submitted a request for an emergency order, pursuant to, *inter alia*, section 202(c) of the Federal Power Act. As envisioned by FirstEnergy, such order would result in utility customers paying above-market cost-of-service rates (including a guaranteed profit) for at least four years to the owners of all merchant coal and nuclear generating units in PJM that have at least 25 days' worth of onsite fuel. According to FirstEnergy, such payments are necessary to prop up those merchant coal and nuclear plants in order to ensure "resiliency" in the PJM system and avoid an "emergency" triggering the extraordinary powers of section 202(c). In reality, however, FirstEnergy has not shown that resiliency is at risk, or that the aging coal and nuclear units that may be retiring over the next seven years are needed to ensure such resiliency. Nor has FirstEnergy proposed a remedy that could be legally authorized under the Federal Power Act.

FirstEnergy's request here is nothing more than a slightly scaled down version of the Grid Resiliency Pricing proposal that the Federal Energy Regulatory

Commission ("FERC") unanimously rejected less than three months ago. FirstEnergy has not and could not provide any basis for a different result to be reached here. As such, the Department can reject FirstEnergy's legally flawed and factually unsupported request out of hand.

If the Department does not reject FirstEnergy's request as not approvable on its face, we urge you to open up a formal docket, or undertake some other public proceedings to solicit public comments, so that the Department can reach a considered decision in this matter.<sup>1</sup> As set forth below, FirstEnergy's application raises substantial legal and policy issues, will impose staggering costs on PJM ratepayers, and undermine competition and investor certainty in the PJM marketplace.

## **I. Procedure and Standing**

In this letter, Sierra Club sets out its initial comments in response to FirstEnergy's request. Should the Department not reject FirstEnergy's request outright, we expect that it will open a docketed proceeding to address the request, as it did in response to the request from PJM Interconnection last year regarding the Yorktown units.<sup>2</sup> Sierra Club intends to fully participate in that proceeding through the submission of evidence and legal argument, and to seek rehearing should the Department issue an order outside the scope of its authority.

Sierra Club feels compelled to offer these initial comments only the day after FirstEnergy's request was filed because, as FirstEnergy directly acknowledges in the request, it "likely will file for bankruptcy by the end of March 2018."<sup>3</sup> A bankruptcy filing may affect the rights of entities such as the Sierra Club to fully protect their interests in this matter.

Sierra Club has a substantial interest in this matter and would be adversely affected in numerous ways by an order along the lines of what FES proposes. FES' proposed order would require PJM to negotiate contracts with dozens of coal and nuclear-power generation units across PJM's territory, to provide those generation owners with recovery of all their costs, including a rate of return. These additional

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<sup>1</sup> The Department has taken the position that its orders, under section 202(c), are "proceedings" within the meaning of section 313 of the Federal Power Act, 16 U.S.C. § 8251. That interpretation of the Act emphasizes the appropriateness of engaging in the procedural steps by which the Department conducts its other proceedings—most importantly, notice and an opportunity for interested parties to comment.

<sup>2</sup> DOE, Federal Power Act Section 202(c) – PJM Interconnection & Dominion Energy Virginia, 2017, at <https://www.energy.gov/oe/downloads/federal-power-act-section-202c-pjm-interconnection-dominion-energy-virginia-2017-0>.

<sup>3</sup> FirstEnergy's March 29, 2018 request to the Department at 8, 20.

costs would be passed on to PJM's ratepayers. The relief that FES seeks for all merchant units in PJM is extremely similar to that called for in the Grid Resiliency Pricing Rule last fall.<sup>4</sup> That rule was projected to have costs of up to \$8.1 billion annually for PJM ratepayers.<sup>5</sup>

As of late 2016, Sierra Club had over 112,000 members who reside in the service territory of PJM and pay electricity bills to load-serving entities that buy power from PJM. These members would see higher electricity bills as a result of FirstEnergy's requested order. These financial harms to our members are germane to Sierra Club's mission, which includes addressing the quality of the human environment by promoting an affordable transition to clean energy. Sierra Club also has offices in PJM territory and is itself a ratepayer affected by any cost increases put in place as a result of an order responsive to FES' request.

In addition, Sierra Club members are affected by the pollution that will be produced by continued operations of coal-fired power plants that would otherwise retire in the near future. As described below, most of the retirements vaguely alluded to by FES are several years away. However, several units have already been cleared for retirement, such as FirstEnergy's Pleasants Power Station, which PJM has determined can close on January 1, 2019 without any adverse impacts on reliability.<sup>6</sup> Sierra Club has members who are negatively affected by air and water pollution from Pleasants that would otherwise cease upon its deactivation, but would persist if the plant received additional compensation as envisioned in FES' request.

The Sierra Club has a demonstrated organizational commitment to the above-described interests. The Sierra Club's Beyond Coal Campaign seeks to reduce the pollution currently being produced by coal-fired power plants such as those that FES seeks to support. To that end, Sierra Club has participated in regulatory proceedings relating to all of the units listed in Attachment A to FES' request,

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<sup>4</sup> DOE, Notice of Proposed Rulemaking: Grid Resiliency Pricing Rule, available at <https://www.energy.gov/sites/prod/files/2017/09/f37/Notice%20of%20Proposed%20Rulemaking%20.pdf>.

<sup>5</sup> See Robbie Orvis et al., The Department of Energy's Grid Resilience Pricing Proposal: A Cost Analysis (Oct. 2017), available at [http://energyinnovation.org/wp-content/uploads/2017/12/20171025\\_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf](http://energyinnovation.org/wp-content/uploads/2017/12/20171025_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf) (Table 2: Annual Increase in Customer Costs by Region, Reading 4, Total).

<sup>6</sup> Robert Walton, PJM greenlights FirstEnergy to deactivate coal plant units at Pleasants Power Station, UtilityDive (Mar. 22, 2018), at <https://www.utilitydive.com/news/pjm-greenlights-firstenergy-to-deactivate-coal-plant-units-at-pleasants-pow/519791/>.



seeking to mitigate their pollution, minimize costs that ratepayers must bear to support these plants, or both.

## II. FirstEnergy's Application Does Not Describe Any Emergency Within the Meaning of Section 202(c) of the Federal Power Act.

### 1. Section 202(c) Confines Emergencies to Specific, Imminent Events.

Section 202(c) of the Federal Power Act provides the Department with authority over "the generation of electric energy" only "[d]uring the continuance of any war in which the United States is engaged," or if "the [Department] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes." 16 U.S.C. § 824a(c)(1). The statute's use of the present text—that an emergency "exists"—demands, at a minimum, that an emergency be present, certain, and immediate, rather than distant and contingent.

That certainty and immediacy is inherent in the statute's fundamental requirement—an "emergency." The Act does not define "emergency"; according to the dictionary, the word primarily demands "an unforeseen combination of circumstances or the resulting state that calls for *immediate* action." Merriam Webster's Dictionary 407 (11<sup>th</sup> ed. 2009) (emphasis added). An emergency, by definition, is not an anticipated event occurring, perhaps, years in the future; it describes an imminent, unavoidable threat.

The surrounding context emphasizes the exigency of the circumstances described by section 202(c)'s reference to an "emergency": the authority granted by section 202(c) is, primarily, a war-time power. 16 U.S.C. § 824a(c) (authorizing orders during "continuance of any war in which the United States is engaged"). See *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (noting that statutory terms should be interpreted in context of nearby parallel terms "in order to avoid the giving of unintended breadth to the Acts of Congress"). An "emergency" under the statute is limited to circumstances that are similarly urgent: "a *sudden* increase in the demand for electric energy," for example. 16 U.S.C. § 824a(c) (emphasis added). See *Richmond Power and Light v. Federal Energy Reg'y Comm.*, 574 F.2d 610, 615 (D.C. Cir. 1978) (holding that section 202(c) "speaks of 'temporary' emergencies, epitomized by wartime disturbances" and that statute is reasonably understood to exclude circumstances such as "dependence on imported oil").

Section 202(c) is, moreover, expressly meant to address short-term, "temporary" conditions—it provides no authority to implement long-term policy preferences, in response to potential difficulties that may emerge years from now. *Id.* Congress underlined the limited scope of section 202(c) when enacting the provision. "This is

a temporary power designed to avoid a repetition of the conditions during the last war, when a serious power shortage arose. Drought and other natural emergencies have created similar crises in certain sections of the country; such conditions should find a federal agency ready to do all that can be done in order to prevent a breakdown in electric supply." S. Rep. No. 74-621 at 49 (1935).<sup>7</sup>

The Department's regulations confirm those limitations. They define an "emergency" as "an *unexpected* inadequate supply of electric energy" resulting from "the unexpected outage or breakdown of facilities," which may result from "weather conditions, acts of God, or unforeseen occurrences not reasonably within the power of the affected 'entity' to prevent," 10 C.F.R. § 205.370 (emphases added). Anticipated customer demand can be an emergency, only upon "a *sudden* increase" in such demand emphasis). Those examples reflect the limited nature of the emergencies encompassed by section 202(c): unusual, unforeseen, and unexpected events, with immediate and substantial consequences.

2. *The Structure of the Act Further Confirms That the Authority Conferred by Section 202(b) Is Limited to Unusual, Unexpected Circumstances.*

Other portions of the statute, outside section 202(c) itself, reinforce that section's tightly limited scope. Section 202(b) confirms the constrained nature of the Department's emergency powers under section 202(c). That section provides cabined authority (exercised by the Federal Energy Regulatory Commission, rather than the Department) to "direct a public utility ... to establish physical connection[,], ... sell energy, or exchange energy" with other persons, under normal, non-emergency conditions. 16 U.S.C. § 824a(b). The statute establishes specific standards and procedural requirements for such non-emergency orders. *Id.* Section 202(c) removes many of those requirements—but does so only during war-time or similarly extreme circumstances. 16 U.S.C. § 824a(c). See *Otter Tail Power Co. v. Fed. Power Comm.*, 429 F.2d 232, 233-34 (1970) (holding that section 202(c) "enables the Commission to react to a war or national disaster," while section 202(b) "applies to a crisis which is likely to develop in the foreseeable future"). That structure establishes a clear divide between quotidian energy-system management (even where necessary to avert a future crisis), governed by section 202(b), and unusual, unforeseeable 'emergencies,' governed by section 202(c). Read within that structure, section 202(c) cannot apply to routine planning matters; such application would render section 202(b) unnecessary, and eviscerate its procedural and substantive requirements.

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<sup>7</sup> While Congress amended section 202(c) in 2015, it did not alter the Department's basic grant of emergency authority; it only addressed occasions on which a Department order might produce a conflict with other laws. See H.R. Rep. No. 114-357 (2015).

Section 215 of the Federal Power Act, added in 2005, suggests additional boundaries on the Department's powers under section 202(c). Section 215 provides a detailed enforcement mechanism, with specified procedures, remedies, and timeframes, for federal reliability standards. *See generally* 16 U.S.C. § 825o. As the D.C. Circuit has recognized, the portion of the Federal Power Act that predates that section—which includes section 202(c)—did not provide the federal government with the power to enforce requirements designed to ensure broad, long-term reliability requirements. *Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1344 (D.C. Cir. 2009) (noting that prior to the Energy Policy Act of 2005, “the reliability of the nation’s bulk-power system depended on participants’ voluntary compliance with industry standards”). Consequently, a bare violation of a federal reliability standard cannot suffice to provide the Department with “emergency” power to enforce that standard under section 202(c). Reading section 202(c) to permit direct enforcement of reliability requirements through emergency orders would bypass the limits and procedures that Congress enacted in section 215 to constrain such enforcement. *See California Independent System Operator Corp. v. FERC*, 372 F.3d 395, 401-2 (D.C. Cir. 2004) (“Congress’s specific and limited enumeration of [agency] power over [particular matter] in [one section of Federal Power Act] is strong evidence that [separate section] confers no such authority on [agency].”). Similarly, the Federal Power Act contains separate and independent provisions to address wholesale rates, and any perceived insufficiency of such compensation. 16 U.S.C. § 824d & 824e. Those provisions likewise indicate that any perceived inadequacy in the wholesale markets cannot be an emergency sufficient to provide the Department with authority under section 202(c).

3. *The Application Does Not Contain Information Sufficient to Support Any Finding that an Emergency Exists under Section 202(c).*
  - a. The Long-Term Resource-Allocation Concerns Described by FirstEnergy Are Not an “Emergency”.

FirstEnergy’s request describes no imminent, specific threat that could plausibly qualify as an “emergency” under the statute. The request asserts a need for “fuel diversity,” and other parties’ failure to pay FirstEnergy (and other merchant coal and nuclear generators) the “compensation” to which FirstEnergy believes itself to be entitled. Request 3. It cites no imminent shortfall in supply; it states only that certain units have dispatched in the past, and suggests that such units may be replaced by other sources of supply over the next seven years. *Id.* at 8-9. The Department has never exercised section 202(c) under similar circumstances; in every case, it has carefully established an imminent, unavoidable, and specific

short-fall in electricity supply, and issued narrowly tailored orders intended to address that specific shortfall.<sup>8</sup>

Even if those suggestions were adequately supported (and they are not, see Part III, below), they would not suffice to demonstrate an emergency under section 202(c). The Department has made clear that its authority, under section 202(c), may only be exercised to address “a *specific* inadequate power supply situation.” 10 C.F.R. § 205.371 (emphasis added). FirstEnergy’s application alleges no such specific situation; indeed, it acknowledges as much, in its failure to meaningfully address the application requirements specified in the Department’s regulations. Request 30-31. As the D.C. Circuit has noted, such “long-term” policy concerns, associated with “broad questions of resource allocation,” are not the proper subject of an emergency order under section 202(c). *Richmond Power & Light*, 574 F.3d at 615-16 (citation omitted).

b. The Entity Authorized to Address FirstEnergy’s Concerns Has Already Established That There Is No Need for Emergency, Near-Term Action.

The Federal Power Act (and other statutes) give the Federal Energy Regulatory Commission (and the National Electric Reliability Council) primary authority over the questions that FirstEnergy asks this Department to resolve by emergency order. *E.g.*, Request 7-8 & 27 (asserting that “wholesale pricing” is not providing “full[] compensa[tion]” to FirstEnergy and threat to long-term “reliability”), and 16 (claiming non-specific “reliability” concerns). See 16 U.S.C. §§ 824d & 824o. As noted above, that the Federal Power Act includes separate, closely cabined provisions addressing such matters strongly suggests that FirstEnergy’s stated concerns are not appropriately addressed through section 202(c). Rather, they are matters for FERC, and for NERC.

And FERC has already squarely addressed, and rejected, the primary rationale provided by FirstEnergy for an order. As FirstEnergy acknowledges, FERC very recently rejected a proposal by the Department to require certain grid operators, including PJM, to provide cost-based compensation to merchant coal and nuclear generators. See FERC, Grid Reliability and Resilience Pricing, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (Jan. 8, 2018). FERC found that existing tariffs

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<sup>8</sup> FirstEnergy cites the Department’s recent orders regarding the Yorktown power plant. Request 19. But as the Department made clear in response to Sierra Club’s requests for rehearing, those Orders were only issued after the Department found that the orders were the sole means of avoiding “immediate interrupt[ions of] service” to a substantial portion of Virginia, and were narrowly tailored to avoid those defined, established interruptions. Summary of Findings for Department of Energy Order No 202-17-4 at 6-7.

were not unjust and unreasonable, based on the evidence that no “past or planned generator retirements . . . [are] a threat to grid resilience. *Id.* at 15. FirstEnergy presents essentially the same evidence of a threat to resiliency that the Commission rejected just a few months ago. FirstEnergy did not even seek rehearing of the Commission’s January 8 order, but instead seeks to relitigate the issue in a forum it views as more favorable. The Department should not accept FirstEnergy’s invitation to reconsider an issue decided not even three months ago by a unanimous FERC.

Although FERC decided there was no urgent threat to the grid’s reliability to justify the extraordinary action proposed by the Department, it did initiate a docket to promptly and more comprehensively address whether additional steps are needed to ensure resilience. Jan. 8 Order at 17-20. While FirstEnergy asserts that FERC’s ongoing docket to examine the problem that FirstEnergy complains of is “too little, too late,” Request at 10, FERC’s ongoing proceeding is precisely the forum to address the kinds of longer-term issues that FirstEnergy alleges, such as a substantial portion of the generation fleet retiring over a number of years. Likewise, the energy and capacity market reforms that PJM is currently considering, and will shortly present to FERC, are the proper forum to address any shortcomings in market design.

4. *The Relief Requested by the Application Is Not “Just and Reasonable” Compensation Within the Meaning of Section 202(c).*

FirstEnergy asks the Department to require that it and other merchant coal and gas generators receive compensation for “operating expenses, costs of capital and debt, and a fair return on equity and investment,” and specifically prescribe “full cost recovery consistent with ratemaking standards and principles or (b) full recovery of all costs necessary to ensure continued operations.” Request 31-32. FirstEnergy asks that contracts setting out this cost recovery be negotiated within 15 days, a virtual impossibility given the enormous number of units for which FirstEnergy seeks compensation and the likelihood that none of these units, which have operated in competitive markets for years, are prepared to present cost-of-service data to PJM. Moreover, FirstEnergy asks the Department, “if PJM and the owners are unable to agree to the contractual terms” within 15 days, to itself “determine just and reasonable rates.” *Id.*

As an initial matter, the Department’s regulations specify that, should the affected parties be unable to reach an agreement as to rates, the Department “shall . . . refer the rate issues to the Federal Energy Regulatory Commission.” 10 C.F.R. § 205.376. The Department cannot, therefore, grant FirstEnergy’s request that it directly set “just and reasonable rates,” Request at 32. The determination of just and reasonable wholesale rates is a matter indisputably within FERC’s jurisdiction, not that of the Department.

More importantly, the Federal Power Act allows the Department only to implement “just and reasonable” terms. 16 U.S.C. § 824a(c)(1). And the “full recovery” of costs and a fair return on equity that FirstEnergy requests is (Request 31)—as FERC itself has suggested—not demonstrably just or reasonable. In its January 8, 2018 order in RM18-1-000, the Commission held that the proposed remedy to “allow all eligible resources to receive a cost-of-service rate regardless of need or cost to the system” had not been shown to be just and reasonable nor to avoid undue discrimination. *Id.* at 16. FirstEnergy’s proposed compensation here suffers from many of the same flaws in the proposal that FERC rejected, including but not limited to, the lack of any explanation of whether such compensation should be net of market revenues, lack of assurance that a unit is actually needed to serve load, and lack of cost controls imposed by the scrutiny of proper cost-based ratemaking.

### III. PJM is reliable and will remain so for the foreseeable future.

As with the Proposed Grid Resiliency Rule, FirstEnergy’s request relies on unfounded claims that planned retirements of existing generating units threaten the “resiliency” of the PJM system. As Sierra Club and other Public Interest Organizations explained in their initial and reply comments on the Proposed Rule, and as FERC found in rejecting the Proposed Rule, there is no evidence that such generating unit retirements threaten the reliability or resiliency of the system.<sup>9</sup> Instead, as PJM recently explained in response to questions from the U.S. Senate

PJM does not believe that operating outside of the market to preserve a particular class or type of generation is needed at this time for reliability. The markets have been resilient in attracting new investment. In addition, a variety of tools exist as a backstop should specific generation be needed in a particular area.<sup>10</sup>

Nothing in FirstEnergy’s request supports a different conclusion here.

Given that FirstEnergy’s thin support for its request closely resembles that presented to initiate FERC’s consideration of the Grid Resiliency Pricing Rule, Sierra Club refers the Department to the extensive record created in that case, in particular, the comments of Public Interest Organizations, cited above, and those of PJM Interconnection, which provide a detailed rebuttal of the arguments presented

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<sup>9</sup> January 8, 2018 FERC Order in Docket Nos. RM18-1-100 and AD18-7-000.

<sup>10</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

by FirstEnergy in its Request.<sup>11</sup> We write here to briefly address two of the more egregious arguments posited in FirstEnergy's request—FirstEnergy's claims that the 2014 Polar Vortex and the recent Bomb Cyclone somehow demonstrate the resiliency value of the aging coal and nuclear units in PJM.

*1. The Polar Vortex does not justify FirstEnergy's request for DOE to prop up uneconomic coal and nuclear units in PJM.*

FirstEnergy's continued misrepresentation of the events of the 2014 Polar Vortex is especially galling. Request 5, 9, 17. Indeed, while FirstEnergy claims that the Polar Vortex established the necessity of its coal and nuclear units, the Polar Vortex actually showed that on-site fuel storage does not ensure enhanced resiliency.

Of the 35,000 MW of generation capacity that failed to respond, nationwide, during the Polar Vortex, 26 percent was coal and 5 percent was nuclear. DOE Staff Report at 98. And while a significant amount of natural gas capacity also experienced outages, the majority of those outages related to frozen equipment, *not* fuel supply issues.<sup>12</sup> Within PJM, only a quarter of the record high 22% forced outage rate on January 7, 2014, was the result of fuel supply issues.<sup>13</sup> Far more significant were other causes such as faulty plant maintenance and weather-related damage.<sup>14</sup> PJM's subsequent analysis of the Polar Vortex also highlighted that two resources not reliant on fuel—wind energy and demand—overperformed during that time period.<sup>15</sup>

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<sup>11</sup> Initial Comments of PJM Interconnection, L.L.C. on the United States Department of Energy Proposed Rule.

<sup>12</sup> NERC Polar Vortex Review, at 2, 13 (2014), available at [http://www.nerc.com/pa/irm/January%202014%20Polar%20Vortex%20Review/Polar\\_Vortex\\_Review\\_29\\_Sept\\_2014\\_Final.pdf](http://www.nerc.com/pa/irm/January%202014%20Polar%20Vortex%20Review/Polar_Vortex_Review_29_Sept_2014_Final.pdf).

<sup>13</sup> PJM, Analysis of Operational Events and Market Impacts During the January 2014 Cold Weather Events at 25 (May 8, 2014), available at <http://www.pjm.com/~media/library/reports-notice/weather-related/20140509-analysis-of-operational-events-and-market-impacts-during-the-jan-2014-cold-weather-events.ashx> (hereinafter "PJM Jan. 2014 Cold Weather Events").

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 19-21 (May 8, 2014). FirstEnergy repeatedly states that 9300 MW of gas generation was unavailable during the Polar Vortex. Request 5, 17. This claim is based on the isolated fact during one hour of the Polar Vortex, 9,300 MW of generation was unavailable due to interruptions in the natural gas supply. PJM Jan. 2014 Cold Weather Events at 26. FirstEnergy fails to mention, however, that the amount of coal that experienced outages at that same time was 13,700 MW. *Id.*

FirstEnergy ignores the fact that, although fossil-fueled generators failed to perform at a significant rate during the Polar Vortex, PJM successfully managed the threat without having to resort to blackouts, and “even on the day with the tightest power supplies – January 7 – *several steps remained before electricity interruptions might have been necessary.*”<sup>16</sup> This is in large part because PJM, like each RTO, provides for a planning reserve margin precisely to ensure reliability in the event that many supply resources are impacted at the same time, as occurred during the Polar Vortex.

And FirstEnergy also fails to acknowledge the significance of the reforms carried out after the Polar Vortex, which aimed to address the high generator outage rates during the event. In response to the Polar Vortex, FERC held a technical conference focused on the impacts of the Polar Vortex and actions to respond.<sup>17</sup> In November 2014, FERC issued an order to initiate a review of how each RTO was addressing “fuel assurances,” a “broad concept” intending to encompass “a range of generator-specific and system-wide issues, including the overall ability of an RTO’s/ISO’s portfolio of resources to access sufficient fuel to meet system needs and maintain reliability.”<sup>18</sup> Each affected RTO responded to this directive, and ultimately adopted a series of reforms intended to address winter performance concerns. For example, PJM implemented a series of common-sense nonmarket reforms to improve generators’ preparedness for winter conditions.<sup>19</sup> In the very next winter, despite even higher peak winter loads, PJM saw much lower forced outage rates than during the Polar Vortex, and improved performance among generators that had participated in pre-winter operational testing—one of the reforms PJM put in place following the Polar Vortex.<sup>20</sup> In addition, both PJM and ISO-NE modified their capacity market rules so as to ensure supplier performance during scarcity conditions.<sup>21</sup>

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<sup>16</sup> PJM Jan. 2014 Cold Weather Events at 4.

<sup>17</sup> Notice of Technical Conference, “Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators” AD14-8 (February 21, 2014).

<sup>18</sup> Order on Technical Conferences, 149 FERC ¶ 61,145 (Nov. 20, 2014).

<sup>19</sup> See Protest of Public Interest Organizations, FERC Docket No. ER15-623-000, at Appendix B (summarizing PJM’s extensive measures to improve generator preparedness).

<sup>20</sup> See PJM Interconnection, 2015 Winter Report (May 13, 2015), at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20150513-2015-winter-report.ashx?la=en>, at 5-6.

<sup>21</sup> See Order on Proposed Tariff Revisions, 151 FERC ¶ 61,218 (2015); Order on Tariff Filing and Instituting Section 206 Proceeding, 147 FERC ¶ 61,172 (2014).

While FirstEnergy suggests that the Capacity Performance program somehow “failed” because it did not spur the development of new gas supply contracts,



Finally, FirstEnergy's Request would support a fleet of merchant coal units that, in fact, *performed quite poorly* during the Polar Vortex.<sup>22</sup> Analysis by Synergy Energy Economics of hourly generation data reveals that, after initially ramping up to meet growing demand, the coal fleet's performance began to decline even before the peak hour on January 6, 2014.<sup>23</sup> By PJM's winter peak on the evening of the 7<sup>th</sup>, coal output had fallen by more than 2,500 MW relative to its peak from the prior day.<sup>24</sup> Even among units that remained online, most coal units provided less output at the season peak than they had the previous day.

2. *The recent Bomb Cyclone weather event and resulting NETL Report do not justify FirstEnergy's request for DOE to prop up uneconomic coal and nuclear units in PJM.*

In an apparent effort to distinguish its request from the rejected Proposed Rule, FirstEnergy relies heavily on a recently released National Energy Technology Laboratory report ("NETL Report") that purports to find that coal-fired generating units were critical to preserving "resiliency" in PJM and other RTOs/ISOs during the "Bomb Cyclone" winter event in late December to early January.<sup>25</sup> The NETL Report's claim about the resiliency of existing coal units in PJM is based on the fact that during the Bomb Cyclone, coal generation increased more in comparison to the level of generation from December 1 through 26, 2017 than did other forms of generation. FirstEnergy extrapolates from the report that the impacts of the Bomb Cyclone show that "immediate action" to prop up uneconomic coal and nuclear units is "critical."<sup>26</sup>

FirstEnergy's reliance on the NETL Report is unavailing because that report does not actually measure resilience in PJM. Instead, as Michael Goggin at Grid

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Request 11, the company does not address whether that program has, in fact, increased reliability and resiliency of the grid by incentivizing many coal and gas units to weatherize and improve their preparedness for winter events.

<sup>22</sup> Public Interest Organization Initial Comments, RM18-1-000, Appendix E, at E-15.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> FirstEnergy Request at 3-8, citing National Energy Technology Laboratory, Reliability, Resilience, and the Coming Wave of Retiring Baseload Units Volume I: The Critical Role of Thermal Units During Extreme Weather Events (Mar. 13, 2018) ("NETL Report"), available at <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>

<sup>26</sup> FirstEnergy Request at 3.

Strategies LLC has explained,<sup>27</sup> “the report employs a flawed metric of resilience that does not indicate the performance of different types of generators, but instead simply finds which energy sources are the most expensive.” In particular, coal generation was able to increase significantly during the Bomb Cyclone only because those coal units were too costly to operate earlier in December and, therefore, were either idle or only partially utilized. The fact that those idle or partially utilized coal plants increased their generation during the Bomb Cyclone shows only that those coal generators are uncompetitive unless electricity and gas prices increase significantly. Nothing in the NETL Report shows that such increased generation, or the substantially increased costs that it would entail, are necessary to ensure the resiliency or reliability of the PJM system. All bulk electric systems will have some generation that is more expensive and is therefore used primarily during peak load conditions. In PJM’s current generation portfolio many merchant coal plants function (inefficiently) as peaking units, but when those units retire others will take their place as PJM always procures enough generation capacity to meet its reserve margin requirement. In fact, PJM is currently oversupplied and has substantially more generating capacity than it needs.

The NETL Report is unhelpful to FirstEnergy’s effort to take advantage of the Bomb Cyclone because the report fundamentally misses the point. As Michael Goggin explains:

A true examination of resilience would assess actual performance in keeping the lights on for customers. Such an effort should focus on the transmission and distribution system failures that cause the vast majority of customer outages. Such an analysis would also include a range of threats to the power system.

Neither the NETL Report or FirstEnergy’s request provide such an analysis. Instead, they rely on a simplistic assessment that shows that many coal units in PJM are expensive, but fails to support FirstEnergy’s claim that they are critically needed.

In an effort to bolster its case, FirstEnergy seizes on a statement in the NETL Report that demand in PJM “could not have been met without coal” to claim that propping up coal units that are planning to retire by 2025 is necessary.<sup>28</sup> But that claim in the NETL Report, which focuses on capacity rather than generation, is meaningless because it relies on the unrealistic assumption that no other capacity

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<sup>27</sup> Michael Goggin, Fossil Lab Misses Mark in Cold Weather “Resilience” Report, (Mar. 28, 2018), available at <http://sustainableferc.org/fossil-lab-misses-mark-in-cold-weather-resilience-report/>.

<sup>28</sup> FirstEnergy Request at 4, citing NETL Report at 17.

would replace the retiring coal.<sup>29</sup> In reality, substantial amounts of new generation has come online as coal units have retired over the past eight years, as PJM recently detailed:

On the resource side, it should be noted that although PJM saw about 22,000 MW of coal units retire since 2010, the capacity market attracted more than 37,000 MW of new generation since 2007, of which more than 21,000 MW of new generation was placed in service between 2010 and 2017. This has resulted in a current PJM reserve margin of 29.1 percent, which is well above the targeted reserve margin of 16.6 percent for 2017 and 16.1 percent for 2018.<sup>30</sup>

There is no reason to believe that future coal and nuclear unit retirements that may occur by 2025 would not similarly be met with new resources, including renewables, demand response, and energy storage.

Echoing the NETL Report, FirstEnergy proclaims serious concerns about the fact that many of the coal units that dispatched during the Bomb Cyclone are expected to retire in the coming years.<sup>31</sup> In support, FirstEnergy notes that PJM's President has recently testified that 1,410 MWs of nuclear generation and 3,688 MWs of coal generation that operated during the Bomb Cyclone is scheduled to retire in the next five years.<sup>32</sup> The Company neglects to mention, however, that PJM went on to explain that those retiring coal units had a significantly higher forced outage rate (ranging from 16% to 31.7%) during the Bomb Cyclone than the 8% to 11.7% forced outage rate for the non-retiring coal units during that same time.<sup>33</sup> In other words, on the metric that FirstEnergy claims to be concerned

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<sup>29</sup> NETL Report at 17 (noting that "any retiring units that were dispatched during the event would have to be replaced.").

<sup>30</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 1 from Sen. Lisa Murkowski (Jan. 23, 2018).

<sup>31</sup> FirstEnergy Request at 7.

<sup>32</sup> FirstEnergy Request at 7, citing U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

<sup>33</sup> U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

about—performance during extreme weather events—the coal units that the company wants to force customers to prop up fail.<sup>34</sup>

Ultimately, FirstEnergy's attempt to use the Bomb Cyclone as an excuse to bail out its coal and nuclear plants fails because the PJM systems performance during that weather event shows that there is no looming resiliency crisis. In fact, PJM itself found that:

During the recent cold snap, PJM did not call a performance assessment interval, a 72-hour maintenance recall or any transient shortage intervals. However, the system was well tested and, as detailed in this report, there were indicators of improved performance of generating resources since 2014. Overall, the grid and the generation fleet performed well. Even during peak demand, PJM had excess reserves and capacity.<sup>35</sup>

The available evidence plainly shows that in a time of major changes to the energy mix in our country, PJM is ensuring system reliability and the resilience to keep the lights on even during significant weather events such as the Bomb Cyclone. No basis has been provided for disrupting that system with substantial sums of out-of-market payments that would help prop up some of the oldest and least reliable coal units in the system while filling the coffers of the merchant generating companies that own those units.

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<sup>34</sup> PJM also noted that it “does not see any challenge to reliability or fuel diversity from the announced retirements,” U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Mike Lee (Jan. 23, 2018).

<sup>35</sup> PJM INTERCONNECTION, PJM COLD SNAP PERFORMANCE DEC. 28, 2017 TO JAN. 7, 2018 (Feb. 26, 2018), available at <http://www.pjm.com/-/media/library/reports-notices/weather-related/20180226-january-2018-cold-weather-event-report.ashx>. PJM has also noted that it had 5,400 MWs of emergency demand response available during the Bomb Cyclone that it did not end up needing to utilize. U.S. Sen. Comm. on Energy and Nat. Res., *The Performance of the Electric Power System in the Northeast and Mid-Atlantic During the Recent Winter Weather Events, Including the Bomb Cyclone*, Questions for the Record Submitted to Mr. Andrew Ott, Response to Question 2 from Sen. Lisa Murkowski (Jan. 23, 2018).

#### IV. CONCLUSION

For the foregoing reasons, Sierra Club asks the Department of Energy to promptly deny the request of FirstEnergy Solutions.

Sincerely,

/s/ Casey Roberts

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cc:

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Patricia A. Hoffman  
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Washington, D.C. 20005

Johnsen, Steven (MA)

Document 12

**From:** Kelli O'Neill (b) (6)  
**Sent:** Saturday, March 31, 2018 1:01 AM  
**To:** Secretary Perry  
**Subject:** RE: NO Bailout for Ohio Nuke Plants

Dear Secretary of Energy Perry,

While you may share the same name as the nuclear power plant that has operated for over 50 years, from which I (b) (6), along the shores of one of the world's major freshwater sources, Lake Erie, I certainly hope you do not share the same views as the Perry Nuclear Plant's owners/operators, First Energy Solutions! (NOTE: For all intents and purposes, any reference here to PNPP can also be said of the Davis-Besse Nuclear Power Plant on the western end of Ohio as well for this discussion.)

I am one of the luckiest people ever, in that for (b) (6) along the southern shores of one of our Great Lakes, Lake Erie, in a wee township called Madison-On-The-Lake, once known as the Onion capital of our country, now the Nursery capital, due to its fertile sandy loam soil. Vacationers from several hours away and as close as Cleveland, Youngstown and Pittsburgh, renting or owning a summer cottage on the lake shore, flock to its beaches every Summer and inject plenty of disposable income into the local economy here; it's basically a Summer Tourist Town.

One huge dark shadow falls upon the area - and we're reminded of it at 11:00 AM the first Wednesday of every month when the Perry Nuclear Power Plant Emergency Evacuation Sirens are tested. (b) (6)

Thirty-some years ago, (b) (6) I knew the Perry Nuclear Power Plant was not a benefit to this area and its people, which is why I voiced my concerns about the plant's being granted its full power license. The electricity generated by PNPP goes to the grid, not directly to us, yet we are forced to live with all the inherent risks, such as radioactive waste, just to name one. For instance, the first study conducted by then CEI, later to become Centerior, then FirstEnergy, the operating utility company and part owner of the PNPP, was Not a seismological study to determine earthquake faults. With Fukushima still burning and polluting the Pacific Ocean, one now knows how crucial this study would have been at the time, BEFORE the first shovelful of soil was removed to break ground. No, the local utility instead conducted a socio-economic study to determine the prime location of a reticent population, and they found it right here in Lake County, Ohio.

My protests, and those of 83% of the homeowners here in Madison, fell on deaf ears, and the PNPP was granted its Full Power License by the NRC in November of 1987. Thirty years and several earthquakes later, after the plant owners fought so desperately for the PUCO to grant DeRegulation of the Electric Industry here in Ohio, against our very wishes and warnings that the utility company would not find a worthy competitor, here we are - FirstEnergy says they can no longer afford to own and operate the plant unless you, Sir, give them the funds to float them along. Honestly, FE has been playing this game for thirty years or more that I am aware of. What's the definition of insanity - oh, right - continue doing the very same behaviors and expecting a different outcome... well, that's exactly how CEI/Centerior/FES has conducted themselves to the PUCO, to the NRC, to us - the ratepayers - and now to You and our federal government. I am SO not surprised to hear them crying and pleading for a bailout. On one hand, while they were claiming the value of the plant was one particular lower score or number, so they needn't pay a lot of taxes, their other hand was digging into Ratepayers' pockets, claiming the plant's value to

be so incredibly high they had to charge additional fees to maintain and operate it. And Every Time, our PUCO granted them whatever rate hike they requested.

And now, when they themselves sought to have electric generation deregulated by the PUCO, when we said it wouldn't work, they are claiming they can no longer afford to manage and operate PNPP because there is no competition in Ohio, and due to the affordability and increased availability of alternative energy sources such as natural gas, wind and solar, and because manufacturing jobs have left the area, therefore the need for additional electricity never came to fruition, the reason for building PNPP in the first place, as I understand it. Huh. You don't say...

So FirstEnergy Solutions now wants out of the electric generation business altogether, and frankly, I don't blame them. FirstEnergy has consistently, for Over 30 years, made bad decisions all along, and all along, like a spoiled brat, has gotten their way, EVERY TIME. Nothing is their fault, it seems, if you listen to their PR people, and yet we are expected to continue to cover their mistakes by opening our wallets...Again. Not this time - not while we, the residents, the ratepayers, pay the highest or second highest utility rates in our country, and have to live literally downwind of such grave risks to our fertile soil, our fresh, clean air, and our beautiful, fresh water.

I am Imploring you to REFUSE FirstEnergy any bailout, Secretary Perry, that would keep the Perry Nuclear Power Plant in operation in any way, shape or form, and keep ANY owner of the PNPP from charging us ratepayers for their decades-long bad decisions. And strongly suggest to the NRC to not extend PNPP's operating license, no matter who the owner/operator is or is to become.

With Perry's closing, will our area lose jobs? Yes, it will. Am I pleased to hear that? No, I am not. Yet, anyone working at the PNPP knew when they took those jobs that the plant was only licensed initially through 2017. Perhaps the Department of Energy, under your guidance, can help subsidize training for current nuclear power plant workers to learn Solar or Wind technologies so as to become employable again soon. THAT I would consider a nice solution. Any investment in one's education and training is never a waste in my opinion.

Thank you for your very careful consideration in this extremely important matter, Secretary Perry, and I look forward to your written reply to my letter at your soonest convenience.

All the best,

Kelli O'Neill  
(b) (6)



**From:** [Lotto, Adrienne](#)  
**To:** [Bittner, Kathy \(CONTR\)](#)  
**Subject:** FW: Letter from Advanced Energy Management Alliance  
**Date:** Monday, April 02, 2018 11:50:06 AM  
**Attachments:** [AEMAFirstEnergy4.2.18.pdf](#)

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FYI

*Adrienne Lotto*

Chief of Staff for Assistant Secretary Bruce J. Walker  
Office of Electricity  
1000 Independence Avenue, SW  
Room 8H-033  
Washington, DC 20585  
Tel: (202) 586-1117

---

**From:** Walker, Bruce  
**Sent:** Monday, April 02, 2018 11:11 AM  
**To:** Lotto, Adrienne <Adrienne.Lotto@hq.doe.gov>  
**Subject:** FW: Letter from Advanced Energy Management Alliance

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**From:** Katherine Hamilton  
**Sent:** Monday, April 2, 2018 11:10:18 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Secretary Perry  
**Cc:** Walker, Bruce  
**Subject:** Letter from Advanced Energy Management Alliance

Dear Secretary Perry, attached please find a letter from Advanced Energy Management Alliance in support of PJM's response to the FirstEnergy 202(c) petition. Feel free to reach out should you have any questions regarding our position.

Best regards,

Katherine Hamilton

Katherine Hamilton  
*Executive Director*

**Advanced Energy Management Alliance**  
Office: 202-524-8832  
Cell: (b) (6)



PO Box 65491  
Washington, DC 20035  
p 202.580.8284  
e [info@aem-alliance.org](mailto:info@aem-alliance.org)  
[aem-alliance.org](http://aem-alliance.org)

By Electronic Mail

April 2, 2018

The Honorable James Richard Perry  
Secretary of Energy  
United States Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: FirstEnergy Request for Emergency Order Pursuant to Federal Power Act Section 202(c)

Dear Secretary Perry:

The Advanced Energy Management Alliance ("AEMA")<sup>1</sup> writes in support of the PJM Interconnection position regarding the FirstEnergy 202(c) petition. AEMA is a trade association under Section 501(c)(6) of the Federal tax code whose members include national distributed energy resource companies and advanced energy management service and technology providers, including demand response ("DR") providers, as well as some of the nation's largest demand response and distributed energy consumers.

AEMA's mission is to advocate for policies that empower and compensate customers appropriately in a manner that contributes to a more efficient, cost-effective, resilient, reliable, and environmentally sustainable grid and we have continually

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<sup>1</sup> For more information, see AEMA website: <http://aem-alliance.org>

supported the inclusion of these resources into wholesale markets to achieve electricity cost savings for consumers, contribute to system reliability, and ensure balanced price formation.

The resources AEMA represents are part of the diversity that is crucial to operating the grid in a reliable manner. We believe that any attempt to increase payments to only a sub-set of power plants will simply drive up costs on the entire grid—both for consumers and for innovative technologies such as demand response, distributed energy resources, and distributed energy storage, that increasingly provide flexible and resilient services to the system. The Federal Energy Regulatory Commission (“FERC”) has cited multiple studies finding that distributed energy resources contribute to reliability and to resilience by providing “greater reliability through consumer reliance upon distributed energy resources to provide resilience from bulk power and distribution service interruptions” and “power outage mitigation or critical power support during outages (resilience) and power quality improvement (enhanced reliability).”<sup>2</sup>

AEMA has engaged<sup>3</sup> at FERC and in states throughout various resilience proceedings, making a strong case for inclusion of distributed resources for reliability and

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<sup>2</sup> FERC citing *Responses in a High Distributed Energy Resources Future*, at 26-28 (Report 1, Nov. 2015), [https://emp.lbl.gov/sites/all/files/lbnl-1003823\\_0.pdf](https://emp.lbl.gov/sites/all/files/lbnl-1003823_0.pdf) (Berkeley Lab Report); DNV-GL, *A Review of Distributed Energy Resources: New York Independent System Operator*, at 18 (Sept. 2014) (DNV-GL Report), [http://www.nyiso.com/public/webdocs/media\\_room/publications\\_presentations/Other\\_Reports/Other\\_Reports/A\\_Review\\_of\\_Distributed\\_Energy\\_Resources\\_September\\_2014](http://www.nyiso.com/public/webdocs/media_room/publications_presentations/Other_Reports/Other_Reports/A_Review_of_Distributed_Energy_Resources_September_2014); U.S. Department of Energy, *The Potential Benefits of Distributed Generation and Rate-related Issues that May Impede Their Expansion: A Study Pursuant to Section 1817 of the Energy Policy Act of 2005* (Feb. 2007), <https://www.ferc.gov/legal/fed-sta/exp-study.pdf>; IEA, *Repowering Markets: market design and regulation during the transition to low-carbon power systems*, at 33 (2016)

<sup>3</sup> AEMA filed Comments (<http://aem-alliance.org/aema-files-comments-doe-nopr-ferc/>) and Reply Comments to the DOE NOPR (<http://aem-alliance.org/aema-files-reply-comments-doe-nopr/>) as well as comments in Puerto Rico regarding resilience (<http://aem-alliance.org/aema-makes-resilience-recommendations-puerto-rico-commission/>).

resilience as critical to maintaining a flexible, cost-effective, and reliable system. We agree with PJM that their system, because of the diversity of resources participating in their ISO, is not facing issues of reliability. AEMA remains convinced that the technologies and services that our consumers and innovators are providing in PJM are part of the reason for that reliability. Thus, we support the position of PJM in opposition to the FirstEnergy petition.

Please do not hesitate to contact me at 202-524-8832 or [Katherine@aem-alliance.org](mailto:Katherine@aem-alliance.org) should you have any questions regarding this letter. Thank you for the consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Hamilton", with a stylized flourish at the end.

Katherine Hamilton  
Executive Director  
Advanced Energy Management Alliance



1200 G Street, NW • Suite 800 • Washington, DC 20005  
Tel: 202.898.5700 • Fax: 717.260.7165

Robert A. Weishaar, Jr.  
Direct Dial: 202.898.5700  
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April 2, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
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**RE: Motion of PJM Industrial Customer Coalition to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is PJM Industrial Customer Coalition's ("PJMICC") Motion to Intervene in the proceeding concerning FirstEnergy Solutions Corp.'s ("FES") Request For Emergency Action Under Section 202(c) of the Federal Power Act. PJMICC is comprised of several of the nation's largest manufacturers, with significant electricity-consuming facilities in Pennsylvania, Ohio,

**[www.McNeesLaw.com](http://www.McNeesLaw.com)**

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • FREDERICK, MD • WASHINGTON, DC

The Honorable James Richard Perry, et al.  
April 2, 2018  
Page 2

Indiana, West Virginia, and other states in the PJM Region. PJMICC member companies strongly oppose the FES Request for emergency action. If the Request is not denied outright, all interested parties should be given 60 days to file comments, as requested by the Electric Power Supply Association and other organizations on Friday, March 30, 2018.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

A handwritten signature in black ink, appearing to read "Robert A. Weishaar, Jr.", is written over a horizontal line.

By

Robert A. Weishaar, Jr.

Counsel to the PJM Industrial Customer Coalition

RAW/db

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant  
To Federal Power Act Section 202(c) By  
FirstEnergy Solutions Corp.**

)  
)  
)  
)  
)

**DOE Docket No. \_\_\_\_\_**

**MOTION OF PJM INDUSTRIAL CUSTOMER  
COALITION TO INTERVENE**

The PJM Industrial Customer Coalition (“PJMICC”), by and through its counsel, hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a letter (“Request”) to the Honorable James Richard Perry, Secretary of Energy, requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. (“PJM”) territory requiring immediate intervention. Specifically, FES requests that the Secretary (a) order “certain existing nuclear and coal-fired generators . . . to enter into contracts” with PJM to generate and transmit energy, capacity, and ancillary services to “maintain the stability of the electric grid” and (b) order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide” to energy markets and the public. FES served the Request on over 100 owners of generation, transmission, or distribution assets, state public utility commissions, and others.

## **II. MOTION TO INTERVENE**

PJMICC is an ad hoc association of large consumers of electricity that have facilities located throughout the PJM region. PJMICC members include large manufacturers in the steel, cement, paper, chemical, pharmaceutical, consumer products, and other industries, and large institutional consumers including universities and hospitals. If the Request is granted, cost responsibility for payments made pursuant to the Emergency Order may be recovered from consumers throughout the PJM region, including PJMICC member companies. PJMICC strongly opposes the Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the Request is unjustified and unlawful, and should not be granted.

PJMICC moves for intervention under Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure.<sup>1</sup> Consistent with Rule 214(b)(2), PJMICC has a significant and direct interest in the outcome of this proceeding. Further, as an organization representing many of the largest electricity consumers in the PJM footprint, PJMICC's participation is in the public interest.

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<sup>1</sup> Federal Power Act Section 202(c) and the Department indicate that the Federal Power Act and the Commission's Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department's website points to the Commission's Rules where DOE regulations at 10 C.F.R. § 205.370, et. seq., are silent. *See, e.g.,* DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2. Additionally, the Department has taken the position that the procedure for judicial review of emergency orders under Section 202(c) of the Federal Power Act must be secured through Section 313 of that Act, 16 U.S.C. § 8251. *See, e.g.,* Order No. 202-05-3, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 20, 2005) at 11-12. The plain language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. Where, as here, a proceeding exists under Chapter 12 of the Federal Power Act, the Commission's Rules of Practice and Procedure apply. *See* 16 U.S. Code § 825g(b) (FPA § 308) ("All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.").



### **III. SERVICE OF DOCUMENTS**

The following persons are designated by PJMICC to receive service and communications on its behalf with regard to this proceeding:

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Email: [sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)  
[mgarber@mcneeslaw.com](mailto:mgarber@mcneeslaw.com)

### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. PJMICC opposes the relief sought by FES. Overwhelming evidence, not cited in the Request, demonstrates that no need exists for the requested relief and certainly no emergency exists that would justify application of Section 202(c) of the Federal Power Act. PJMICC is developing a comprehensive rebuttal to FES' Request, and will be submitting that rebuttal to the Department.

PJMICC respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before ruling on the Request.<sup>2</sup> To that end, PJMICC supports the request that was filed Friday, March 30, 2018, by the Electric Power Supply Association and other organizations requesting a 60-day comment period.

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<sup>2</sup> Obviously, PJMICC would not oppose an outright rejection of the Request, without a notice and comment period.

V. CONCLUSION

For the reasons set forth above, PJMICC respectfully requests that the Department grant PJMICC's motion to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties with 60 days to file comments on the Request.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

/s/ Robert A. Weishaar, Jr.

By \_\_\_\_\_

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
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Washington, DC 20005  
Phone: (202) 898-5700  
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[mgarber@mcneeslaw.com](mailto:mgarber@mcneeslaw.com)

Counsel to the PJM Industrial Customer Coalition

Dated: April 2, 2018

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 2nd day of April, 2018.

/s/ Robert A. Weishaar, Jr.

---

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
1200 G Street NW, Suite 800  
Washington, DC 20005  
Phone: (202) 898-5700  
Fax: (717) 260-1765  
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Kenneth R. Carretta  
Deputy General Counsel

Law Department  
80 Park Plaza, TS, Newark, NJ 07102-4194  
tel: 973.430.6462 fax: 973.430.5983  
email: kenneth.carretta@pseg.com



April 2, 2018

VIA COURIER

The Honorable James Richard Perry  
Secretary of Energy United States  
Department of Energy 1000  
Independence Avenue, S.W.  
Washington, DC 20585

**Re: Request for Emergency Order Pursuant to Federal Power Act Section 202(c) Of  
First Energy Solutions/Intervention and Comments of PSEG Companies**

Dear Secretary Perry:

On March 29, 2018, FirstEnergy Solutions (along with its identified affiliates) ("FES") submitted an application ("Application") pursuant to Section 202(e) of the Federal Power Act ("FPA"), Section 301(b) of the Department of Energy ("DOE") Organization Act, seeking a finding by the Secretary of Energy ("Secretary") that an emergency condition exists in the footprint of the PJM Interconnection, L.L.C. ("PJM"). The Application contends that immediate intervention by the Secretary, in the form of a Section 202(c) emergency order is needed to support resiliency and the continued operation of fuel-secure resources.

The PSEG Companies<sup>1</sup> agree the Application identifies an issue that requires immediate attention within the PJM footprint. PJM is faced with the recently announced closure of more 4,048 megawatts of FES nuclear generation and is faced with the risk of losing other nuclear plants in the future. Not only does nuclear generation provide resiliency to the generation fleet but it also provides the largest source of carbon-free generation in the region. The loss of nuclear generation to the PJM footprint would severely undermine the achievement of environmental goals designed to reduce the emission of greenhouse gases. Further, in addition to their fuel-secure and zero-emission attributes, nuclear plants are already hardened against many potential

---

<sup>1</sup> The "PSEG Companies" consist of PSEG Power LLC, PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company. In addition to submitting comments, the PSEG Companies also move to intervene in this proceeding to the extent that a formal request for intervention is required. A formal request to intervene and a further description of the PSEG Companies and their interests in this proceeding is set forth in Attachment A hereto.


threats<sup>2</sup> and provide other national security benefits<sup>3</sup>. To date, the PSEG Companies do not believe that either PJM or FERC has given this issue the proper level of priority or attention. The PSEG Companies thus urge policy makers to take immediate steps to assure that the attributes of nuclear generation are properly valued in market rules so that nuclear generation retains its role in supporting a resilient and secure electric grid and continues to serve as an important economic driver in the communities they serve.

Finally, the PSEG Companies reserve their rights to supplement their response under 10 C.F.R. § 205.374, and provide any other information relevant to the action requested in the Application.

Respectfully submitted,

PSEG Power LLC  
PSEG Energy Resources & Trade LLC  
Public Service Electric and Gas Company

By:



Kenneth R. Carretta  
Deputy General Counsel  
PSEG Services Corporation  
80 Park Plaza – T5  
Newark, New Jersey 07102  
(973) 430-6462  
[Kenneth.Carretta@pseg.com](mailto:Kenneth.Carretta@pseg.com)

Cc: Bruce J. Walker, Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability  
Patricia A. Hoffman, Principal Deputy Assistant Secretary, DOE Office of Electricity Delivery & Energy Reliability  
FirstEnergy Solutions Corp.  
Federal Energy Regulatory Commission  
Delaware Public Service Commission  
Illinois Commerce Commission  
Indiana Utility Regulatory Commission

<sup>2</sup> See *Grid Reliability and Resilience Pricing*, RM18-1-000, "Reply Comments of the PSEG Companies," Affidavit of Jeremy C. Carl, p. 10 ("Nuclear has an advantage in this world because nuclear power plants are already hardened against risks and have been designed with safety and security (physical and cyber) in mind from the ground up.")

<sup>3</sup> See *Grid Reliability and Resilience Pricing*, RM18-1-000, "Reply Comments of the PSEG Companies," Affidavit of Jeremy C. Carl, p. 13 ("In addition to our work in non-proliferation, the civilian nuclear enterprise dramatically strengthens our military capability as well, another nuclear attribute that is not priced into the market.")

Kentucky Public Service Commission  
Maryland Public Service Commission  
Michigan Public Service Commission  
State of New Jersey Board of Public Utilities  
North Carolina Utilities Commission  
Public Utilities Commission of Ohio  
Pennsylvania Public Utilities Commission  
Tennessee Public Utility Commissions  
Commonwealth of Virginia State Corporation Commission  
Public Service Commission of West Virginia  
New York Public Service Commission  
Public Service Commission of the District of Columbia  
PJM Interconnection  
ReliabilityFirst Corp.  
SERC Reliability Corporation  
AES Warrior Run  
Avon Lake  
B L England  
Beaver Valley  
Birchwood Power  
Braidwood Generation Station  
Brandon Shores  
Brunner Island  
Byron Generating Station  
Calvert Cliffs Nuclear Power Plant  
Cardinal  
Chalk Point  
Chambers Cogeneration LP  
Chesterfield  
Cheswick Power Plant  
Clover  
Conemaugh  
Conesville  
Cooper  
Covington Facility  
CP Crane  
Davis Besse  
Dickerson  
Donald C Cook  
Dover  
Dresden Generating Station  
East Bend  
Edgecombe Genco  
FirstEnergy Bruce Mansfield  
FirstEnergy Fort Martin Power Station  
FirstEnergy Harrison Power Station

FirstEnergy Pleasants Power Station  
FirstEnergy W H Sammis  
FirstEnergy Solutions Corp.  
General James M Gavin  
H L Spurlock  
Herbert A Wagner  
Homer City Generating Station  
Indian River Generating Station  
Ingredion Incorporated  
J M Stuart  
James River Genco  
John E Amos  
Joliet 9  
Joliet 29  
Keystone  
Killen Station  
Kincaid  
LaSalle Generating Station  
Limerick  
Logan Generating Company  
Longview Power Plant  
Luke Mill  
The Honorable James Richard Perry  
Mecklenburg Power Station  
Miami Fort  
Mitchell (WV)  
Morgantown Generating Plant  
Mountaineer  
Mt Storm  
North Aima  
Orrville  
Oyster Creek  
P H Glatfelter  
P H Glatfelter Chillicothe Facility  
Painesville  
Peach Bottom  
Perry  
Powerton  
PSEG Hope Creek Generating Station  
PSEG Salem Generating Station  
Quad Cities Generating Station  
Radford Army Ammunition Plant  
Rockport  
Spruance Genco  
Surry  
TalenEnergy Montour

TalenEnergy Susquehanna  
Tennessee Eastman Operations  
Three Mile Island  
University of Notre Dame  
Virginia City Hybrid Energy Center  
W H Zimmer  
Waukegan  
Wausau Paper Middletown  
Whitewater Valley  
Will County  
Yorktown



**Attachment A: Description of the PSEG Companies and Request to Intervene**

The PSEG Companies consist of PSEG Power LLC (PSEG Power), PSEG Energy Resources & Trade LLC (PSEG ER&T) and Public Services Electric and Gas Company (PSE&G) and are each wholly owned, direct and indirect subsidiaries of Public Service Enterprise Group Incorporated ("PSEG"). The principal and executive offices of PSEG are located at 80 Park Plaza, Newark, New Jersey 07102. PSEG is a public utility holding company engaged in, among other things, the generation of electric energy, and the transmission, distribution and sale of electricity and natural gas through its subsidiaries.

The PSEG Companies respectfully submit that they have vital interests in this proceeding and that their participation will serve the public interest. In addition, some or all of the PSEG Companies (or their subsidiaries) may qualify as "entities" that have been "designated as a potential source of emergency assistance or as a potential supplier of transmission services" within the meaning of 10 C.F.R. § 205.374 of the DOE's regulations.

PSEG Power is a wholesale energy supply company that integrates its generation asset operations with its wholesale energy, fuel supply, energy trading and marketing, and risk management functions through three principal subsidiaries: (i) PSEG Nuclear LLC ("PSEG Nuclear"), which owns and operates nuclear generating stations; (ii) PSEG Fossil LLC ("PSEG Fossil"), which develops, owns, and operates domestic fossil-fuel fired and other non-nuclear generating stations; and (iii) PSEG ER&T, which markets the capacity and production of PSEG Nuclear's and PSEG Fossil's generating stations. PSE&G is the largest electric and gas utility located in the state of New Jersey and is a PJM transmission owner.

PSEG Power's subsidiary, PSEG Nuclear, is the operator of two nuclear generating plants -- Salem and Hope Creek -- located in Salem County, New Jersey. Exelon Corporation is a co-owner with PSEG Nuclear of the Salem units. In addition, PSEG is the non-operator co-owner, also with Exelon Corporation, of an interest in the Peach Bottom nuclear plant located in southeastern Pennsylvania. In total, PSEG Nuclear owns approximated 3,630 MWs of nuclear generation capability. All three of the nuclear plants are identified in Attachment A to the Application. PSEG ER&T and PSE&G also have significant interests at stake. PSEG ER&T's activities in the PJM market and as a supplier of load in the PJM region could be affected by the outcome of this proceeding. PSE&G's operations and the customers located in its service territory could also be affected.

**Johnsen, Steven (MA)**

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**From:** Robert Rutkowski (b) (6)  
**Sent:** Monday, April 02, 2018 12:36 PM  
**To:** Secretary Perry  
**Subject:** Dying Coal- and Nuclear-Powered Utility Asks Again for Government Bailout

Rick Perry  
Secretary of Energy  
1000 Independence Ave. SW  
Washington DC 20585  
202-586-5000  
[The.Secretary@hq.doe.gov](mailto:The.Secretary@hq.doe.gov)

**Re: Dying Coal- and Nuclear-Powered Utility Asks Again for Government Bailout**

Dear Secretary:

FirstEnergy, a utility struggling to stay alive in the dying coal and nuclear industries, is once again looking for a bailout from government regulators.

Ohio-based FirstEnergy has asked the Department of Energy to take emergency action to keep its coal-fired and nuclear power plants open. The plants can't compete with cheaper renewable energy and natural gas on the open market. This comes on the heels of the company announcing that it will close three nuclear plants by 2022.

In a letter to you, FirstEnergy claimed that closing its power plants would jeopardize reliability of the electric grid. Sound familiar?

In November, FirstEnergy and other companies lobbied the Trump administration to bail out their industries by requiring regional grids to buy a percentage of power from coal and nuclear plants, even when less expensive sources are available. The scheme was shot down by the Federal Energy Regulatory Commission.

The bailout was the brainchild of Robert Murray, CEO of a Murray Energy, a major supplier of coal to FirstEnergy. Robert Murray was a major donor to President Trump's campaign, and his wish list set the agenda for many of the administration's rollbacks of environmental regulations.

Under the Freedom of Information Act, EWG and American Oversight petitioned for release of all communications between you and coal and utility companies, including Murray Energy and FirstEnergy. They are still waiting on a response.

This has nothing to do with maintaining smooth operation of the electric system. It has everything to do with FirstEnergy's perilous finances. On Monday, FirstEnergy Solutions, the division of the company that sells power on the open market filed for bankruptcy. According to Greentech Media, FirstEnergy lost \$6.2 billion in 2016.

As before, regional grid operators were quick to dismiss FirstEnergy's claim that loss of their plants would threaten the reliability of the electric system. PJM, the operator that oversees the largest regional wholesale electricity market in the nation – including the states where FirstEnergy operates – explained:

This is not an issue of reliability. There is no immediate emergency. Diversity of the fuel supply is important, but the PJM system has adequate power supplies and healthy reserves in operation today, and resources are more diverse than they have ever been. Nothing we have seen to date indicates that an emergency would result from the generator retirements.

Asking for a bailout from taxpayers or ratepayers is old hat for FirstEnergy, which has also asked Ohio regulators for help. The company's bailout proposal in 2016 would have cost ratepayers \$4 billion, according to the Institute for Energy Economics and Financial Analysis. State regulators approved the scheme, but federal regulators said no, reasoning that it would have distorted wholesale market prices.

Many utilities are quick to deride subsidies for solar panels and wind farms, but have no qualms with seeking government subsidies to keep coal and nuclear on life support. In the competition for cheaper, cleaner electricity, coal and nuclear have already lost to solar and wind. FirstEnergy's deathbed plea is further proof that the era of coal and nuclear power dominance is over.

Thank you for the opportunity to bring these remarks to your attention.

Yours sincerely  
Robert E. Rutkowski

cc:  
House Democratic Whip Office  
Legislative Correspondence Team

(b) (6)

P/F: (b) (6)  
E-mail: (b) (6)



April 3, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W. Washington, DC 20585  
the.secretary@hq.doe.gov

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W. Washington, DC 20585  
bruce.walker@hq.doe.gov

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W. Washington, DC 20585  
catherine.jereza@hq.doe.gov

**RE: Motion of American Municipal Power Inc. to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is American Municipal Power, Inc.'s ("AMP") Motion to Intervene and Statement of Opposition in the proceeding concerning FirstEnergy Solutions Corp.'s ("FES") Request For Emergency Action Under Section 202(c) of the Federal Power Act. AMP is a nonprofit Ohio corporation that provides electric power and services to municipal members with electric utility systems across a nine state footprint, including: Ohio, West Virginia, Pennsylvania, Michigan, Virginia, Kentucky, Indiana, Maryland and Delaware. AMP strongly opposes the FES Request for emergency action. If the Request is not denied outright, all interested parties should be given 60

**DELAWARE** DELAWARE MUNICIPAL ELECTRIC CORPORATION **INDIANA** CANNELTON **KENTUCKY** BENTLEY • BEREA • PADUCAH • PARIS • PRINCETON • WILLIAMSTOWN  
**MARYLAND** BERLIN **MICHIGAN** CLINTON • COLDWATER • HILLSDALE • MARSHALL • UNION CITY • WYANDOTTE **OHIO** AMHERST • ARCADIA • ARCADUM • BEACH CITY • BLANCHESTER  
BLOOMDALE • BOWLING GREEN • BRADNER • BRAWSTER • BRYAN • CAREY • CELINA • CLEVELAND • CLYDE • COLUMBIANA • COLUMBUS • CRESTAR • CUYAHOGA FALLS • CYGNET • DELTA  
DESILLER • DOVER • EDGERTON • ELDOBRADO • ELMORE • GATON • GENOA • GEORGETOWN • GLOSTER • GRAFTON • GREENWICH • HAMILTON • HASKINS • HOLIDAY CITY • HUBBARD  
JEDSON • JEBRON • JACKSON • JACKSON CENTER • LAKETOWN • LEBANON • LOUI • LUCAS • MARSHALLVILLE • MENDON • MIDAN • MINSTER • MONROEVILLE • MONTPELIER • NAPOLEON • NEW  
BREMEN • NEW KNOXVILLE • NEWTON FALLS • NILES • OAK HARBOR • OBERLIN • OHIO CITY • ORRVILLE • PAINESVILLE • PEMBERTON • PIONEER • PIQUA • PLYMOUTH • PROSPECT • REPUBLIC  
SEVILLE • SHELBY • SHILOH • SOUTH VIENNA • ST. CLAIRSVILLE • ST. MARYS • SYCAMORE • TIPP CITY • TOLEDO • VERSAILLES • WADSWORTH • WAPAKONETA • WAYNESFIELD • WELLINGTON  
WESTERVILLE • WHARTON • WOODSFIELD • WOODVILLE • YELLOW SPRINGS **PENNSYLVANIA** BERLIN • BLAKELY • CATAWISSA • DUNCANSON • EAST CONEMAUGH • ELWOOD CITY  
EPHRAATA • GIRARD • GOLDSBORO • GROVE CITY • HATHFIELD • HOOVERVILLE • KUTZTOWN • LANSDALE • LEHIGHTON • LEWISBERY • MIDDLETOWN • NEW WILMINGTON • PERRASHE  
QUAKERTOWN • ROYALTON • SAINT CLAIR • SCHUYLKILL HAVEN • SMITHPORT • SUMMIT • WAMPUM • WATSONTOWN • WEATHERLY • ZELLENFELT **VIRGINIA** BEDFORD • DANVILLE • FRONT  
ROYAL • MARTINSVILLE • RICHMOND **WEST VIRGINIA** NEW MARTINSVILLE • PHILIPPI

days to file comments, as requested by the Electric Power Supply Association and other interested parties on Friday, March 30, 2018.

/s/ Lisa G. McAlister

American Municipal Power, Inc.  
Lisa G. McAlister  
SVP & General Counsel for Regulatory Affairs  
Kristin Rothery  
Assistant Deputy General Counsel  
1111 Schrock Road, Suite 100  
Columbus, Ohio 43229  
Telephone: 614-540-6400  
Fax: 614-540-6397  
Email: [lmcalister@ampppartners.org](mailto:lmcalister@ampppartners.org)  
[krothey@ampppartners.org](mailto:krothey@ampppartners.org)

**UNITED STATES OF AMERICA  
BEFORE THE DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant  
To Federal Power Act Section 202(c) By  
FirstEnergy Solutions Corp.**

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)  
)  
)  
)

**DOE Docket No. \_\_\_\_\_**

**MOTION OF AMERICAN MUNICIPAL POWER, INC. TO INTERVENE**

American Municipal Power, Inc. ("AMP") by and through its counsel, hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. ("FES"), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES sent a "Request for Emergency Order Pursuant to Federal Power Act Section 202(c) ("Request") to the Honorable James Richard Perry, Secretary of Energy, requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. ("PJM") territory requiring immediate intervention and extraordinary relief. FES requested that the Secretary issue an order directing (1) "certain existing nuclear and coal-fired generators . . . to enter into contracts" with PJM to generate and transmit energy, capacity, and ancillary services to "maintain the stability of the electric grid" and (2) PJM to "promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide" to energy markets and the public. FES requested that the Secretary "immediately issue the emergency order described above." Request at 33.

**II. MOTION TO INTERVENE**

AMP is a nonprofit Ohio corporation organized in 1971 with members in nine states: Ohio, West Virginia, Pennsylvania, Michigan, Virginia, Kentucky, Indiana, Maryland and Delaware. The

members of AMP are political subdivisions of their respective domicile states that own and operate municipal electric utility systems, and the Delaware Municipal Electric Corporation, a political subdivision and joint action agency of the State of Delaware that itself has nine municipal members. AMP's primary purpose is to assist its member communities in meeting their electric and energy needs. This purpose is served in a number of ways, including ownership of electric generation, scheduling and dispatch of member-owned generation, power supply, transmission arrangements, and energy efficiency and demand response measures that AMP makes with third parties at the request of and on behalf of its members. AMP serves as a full or partial requirements supplier for most of its 135 members.

If FES's requested relief is granted, cost responsibility for payments made pursuant to the Emergency Order must ultimately be recovered from customers. Although FES did not address how much those costs will amount to, how such costs should be recovered or from whom, the amounts have been estimated to be staggering, increasing costs to consumers, including AMP members and their customers, by \$8.1 billion annually, which is a roughly 19% increase in total costs.<sup>1</sup> As such, and consistent with Rule 214(b)(2), AMP has a significant and direct interest in the outcome of this proceeding. Additionally, as an organization representing many load serving entities in the PJM region, AMP's participation is in the public interest. Accordingly, AMP moves for intervention under Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure.<sup>2</sup> AMP strongly opposes the

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<sup>1</sup> See, "The Department of Energy's Grid Resilience Pricing Proposal: A Cost Analysis" at 4, available at: [http://energyinnovation.org/wp-content/uploads/2017/12/20171025\\_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf](http://energyinnovation.org/wp-content/uploads/2017/12/20171025_Resilience-NOPR-Cost-Research-Note-UPDATED.pdf).

<sup>2</sup> Federal Power Act Section 202(c) and the Department indicate that the Federal Power Act and the Commission's Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department's website points to the Commission's Rules where DOE regulations at 10 C.F.R. § 205.370, et. seq., are silent. See, e.g., DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2. Additionally, the Department has taken the position that the procedure for judicial review of emergency orders under Section 202(c) of the Federal Power Act must be secured through Section 313 of that Act, 16 U.S.C. § 825l. See, e.g., Order No. 202-05-3, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 20, 2005) at 11-12. The plain

Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the Request is unjustified and unlawful, and should not be granted.

### **III. SERVICE OF DOCUMENTS**

The following persons are designated by AMP to receive service and communications on its behalf with regard to this proceeding:

Lisa G. McAlister, Senior Vice President and General Counsel for Regulatory Affairs\*  
Kristin V. Rothey, Asst. Deputy General Counsel\*  
Chris Norton, Director of Market Regulatory Affairs\*  
AMERICAN MUNICIPAL POWER, INC.  
1111 Schrock Road, Suite 100  
Columbus, OH 43229  
Telephone: (614) 540-1111  
Fax: (614) 540-1080  
E-mail: [lmcallister@ampppartners.org](mailto:lmcallister@ampppartners.org)  
[krothey@ampppartners.org](mailto: krothey@ampppartners.org)  
[cnorton@ampppartners.org](mailto: cnorton@ampppartners.org)  
\* Electronic service requested

### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. AMP opposes the relief sought by FES. Overwhelming evidence, not cited in the Request, demonstrates that no need exists for the requested relief and certainly no emergency exists that would justify application of Section 202(c) of the Federal Power Act. In fact, FES itself states that there were "numerous signs for many years that the emergency was coming." Request at 1. AMP respectfully requests that the Department reject the Request outright. In the alternative, AMP respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before ruling on the Request.<sup>3</sup> To that end, AMP supports the request that was filed

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language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. Where, as here, a proceeding exists under Chapter 12 of the Federal Power Act, the Commission's Rules of Practice and Procedure apply. See 16 U.S. Code § 825g(b) (FPA § 308) ("All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.")

<sup>3</sup> AMP would not oppose an outright rejection of the Request, without a notice and comment period.



Friday, March 30, 2018, by the Electric Power Supply Association and other organizations requesting a 60-day comment period.

**V. CONCLUSION**

For the reasons set forth above, AMP respectfully requests that the Department grant AMP's motion to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties with 60 days to file comments on the Request.

Respectfully submitted,

/s/ Lisa G. McAlister

American Municipal Power, Inc.  
Lisa G. McAlister, Senior Vice President and General  
Counsel for Regulatory Affairs  
Kristin V. Rothery, Asst. Deputy General Counsel  
1111 Schrock Road, Suite 100  
Columbus, Ohio 43229  
Telephone: 614-540-6400  
Email: [lmcalister@ampppartners.org](mailto:lmcalister@ampppartners.org)  
[krothey@ampppartners.org](mailto:krothey@ampppartners.org)

Dated: April 3, 2018

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via electronic transmission the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Columbus, Ohio this 3rd day of April, 2018.

/s/ Lisa G. McAlister

Lisa G. McAlister

Senior Vice President and General Counsel for  
Regulatory Affairs

American Municipal Power, Inc.

1111 Schrock Road, Suite 100

Columbus, Ohio 43229

(614) 540-1111

[lmcalister@ampppartners.org](mailto:lmcalister@ampppartners.org)

[krothey@ampppartners.org](mailto:krothey@ampppartners.org)

4818-8213-4624, v. 4

**From:** Lotto, Adrienne  
**To:** Jereza, Catherine; Bittner, Kathy (CONTR); Harris, Aleisha (CONTR)  
**Subject:** FW: Citizens Utility Board Motion to Intervene  
**Date:** Tuesday, April 03, 2018 1:21:50 PM  
**Attachments:** CUB Motion to Intervene in Emergency Order 4.3.18.pdf

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202 file

*Adrienne Lotto*

Chief of Staff for Assistant Secretary Bruce J. Walker  
Office of Electricity  
1000 Independence Avenue, SW  
Room 8H-033  
Washington, DC 20585  
Tel: (202) 586-1117

---

**From:** Walker, Bruce  
**Sent:** Tuesday, April 03, 2018 12:58 PM  
**To:** Lotto, Adrienne <Adrienne.Lotto@hq.doe.gov>  
**Subject:** FW: Citizens Utility Board Motion to Intervene

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**From:** Eric DeBellis  
**Sent:** Tuesday, April 3, 2018 12:57:42 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Secretary Perry; Walker, Bruce; Jereza, Catherine  
**Subject:** Re: Citizens Utility Board Motion to Intervene

My apologies. Please disregard the prior email. CUB intends to file this attached, updated version instead.

On Tue, Apr 3, 2018 at 11:56 AM, Eric DeBellis <[edebellis@citizensutilityboard.org](mailto:edebellis@citizensutilityboard.org)> wrote:

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is Citizens Utility Board's Motion to Intervene in the proceeding concerning FirstEnergy Corp.'s Request for Emergency Action Under Section 202(c) of the Federal Power Act.

Respectfully submitted,

Eric DeBellis  
Attorney & Policy Analyst  
Citizens Utility Board  
312-263-4282  
[edebellis@citizensutilityboard.org](mailto:edebellis@citizensutilityboard.org)

--

**Eric DeBellis**  
**Attorney & Policy Analyst**  
Citizens Utility Board  
312-263-4282 ext. 108  
[edebellis@citizensutilityboard.org](mailto:edebellis@citizensutilityboard.org)

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )      DOE Docket No. \_\_\_\_\_**

**MOTION OF CITIZENS UTILITY BOARD  
TO INTERVENE**

Citizens Utility Board (“CUB”), by and through its counsel, hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I.      PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a letter (“Request”) to the Energy Secretary James Richard Perry requesting that the Secretary invoke emergency authority under Federal Power Act Section 202(c) to find that an emergency condition exists in the PJM Interconnection (“PJM”) territory that requires immediate intervention. In its request, FES seeks for the Secretary to order “certain existing nuclear and coal-fired generators” to contract with PJM for energy, capacity, and ancillary services to “maintain the stability of the electric grid.” Further, FES requests that the Secretary order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.” FES has served the Request on numerous affected parties.

**II.      MOTION TO INTERVENE**

CUB is a non-profit organization representing the interests of Illinois utilities ratepayers. The State of Illinois created CUB by statute in 1983, the purpose of the Act being “to promote

the health, welfare and prosperity of all the citizens of this State by ensuring effective and democratic representation of utility consumers before the Illinois Commerce Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, the courts, and other public bodies and by providing for consumer education on utility service prices and on benefits and methods of energy conservation.” 220 ILCS 10/2. If the Request is granted, payments made pursuant to the Emergency Order may be recovered from consumers throughout the PJM region, which includes the Commonwealth Edison (“ComEd”) territory in Illinois. CUB opposes the Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the Request would result in unjust and therefore should be rejected.

CUB moves to intervene under Rule 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure. As Rule 214(b)(2) requires, CUB has a significant and direct interest in this proceeding’s outcome. Further, CUB’s role as an advocate for Illinois ratepayers makes CUB’s participation in the public interest. *See* 220 ILCS 10/2 (declaring that the purposes of the Act creating CUB “shall be deemed a statewide interest and not a private or special concern”).

### **III. SERVICE OF DOCUMENTS**

CUB designates the following persons to receive service and communications on its behalf with regard to this proceeding:

Kristin Munsch  
Deputy Director  
Citizens Utility Board  
309 W. Washington St., Suite 800  
Chicago, IL 60606  
(312) 263-4282  
[kmunsch@citizensutilityboard.org](mailto:kmunsch@citizensutilityboard.org)

Eric DeBellis  
Attorney & Policy Analyst  
Citizens Utility Board  
309 W. Washington St., Suite 800  
Chicago, IL 60606  
(312) 263-4282  
[edebellis@citizensutilityboard.org](mailto:edebellis@citizensutilityboard.org)

#### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. CUB opposes granting the relief FES seeks. The available evidence, not cited in this Request, demonstrates that no emergency condition exists and the requested relief is unnecessary.

CUB respectfully urges the Department to give all interested parties sufficient time to present their responses to the Request before the Department rules on the Request. Accordingly, CUB supports the Electric Power Supply Associations' request, filed Friday, March 30, 2018, seeking a 60-day comment period.

#### **V. CONCLUSION**

For the foregoing reasons, CUB respectfully requests that the Department grant CUB's motion to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties 60 days to file comments on the Request.

Respectfully submitted,

By /s/ Eric DeBellis

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Deputy Director  
Citizens Utility Board  
309 W. Washington St., Suite 800  
Chicago, IL 60606  
(312) 263-4282  
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Eric DeBellis  
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Chicago, IL 60606  
(312) 263-4282  
[edebellis@citizensutilityboard.org](mailto:edebellis@citizensutilityboard.org)

Dated: April 3, 2018

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this 3rd day of April, 2018, served via first-class mail, electronic transmission, or hand delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Eric DeBellis

Eric DeBellis  
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STATE OF DELAWARE  
DEPARTMENT OF STATE  
DIVISION OF THE PUBLIC ADVOCATE

820 N. FRENCH STREET, 4<sup>TH</sup> FLOOR  
WILMINGTON, DELAWARE 19801

29 SOUTH STATE STREET  
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1.888.607.2427  
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April 3, 2018

**VIA ELECTRONIC MAIL**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[the.secretary@hq.doe.gov](mailto:the.secretary@hq.doe.gov)

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[bruce.walker@hq.doe.gov](mailto:bruce.walker@hq.doe.gov)

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[catherine.jereza@hq.doe.gov](mailto:catherine.jereza@hq.doe.gov)

**RE: Motion of the Delaware Division of the Public Advocate to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is the Delaware Division of the Public Advocate's ("DPA") Motion to intervene in the proceeding concerning FirstEnergy Solutions Corp.'s ("FES") Request for Emergency Action under Section 202(c) of the Federal Power Act. The Delaware DPA is an agency of the State of Delaware statutorily charged to advocate for the lowest reasonable rates for consumers and small businesses

consistent with the maintenance of adequate utility service. Further, the Delaware DPA is empowered to appear on behalf of the interest of consumers in Delaware's state courts, the federal courts and federal administrative and regulatory agencies and commissions in matters involving rates, service and practices of public utilities.

The Delaware DPA strongly opposes the FES Request for emergency action. If the Request is not denied outright, all interested parties should be given 60 days to file comments, as requested by the Electric Power Supply Association and other organizations on Friday, March 30, 2018.

Respectfully submitted,

Delaware Division of the Public Advocate

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By: Andrew C. Slater,  
Public Advocate

Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )

1

## **II. MOTION TO INTERVENE**

The Delaware Division of the Public Advocate (“Delaware DPA”) is an agency of the State of Delaware statutorily charged to advocate for the lowest reasonable rates for consumers and small businesses consistent with the maintenance of adequate utility service. Further, the Delaware DPA is empowered to appear on behalf of the interest of consumers in Delaware’s state courts, the federal courts and federal administrative and regulatory agencies and commissions in matters involving rates, service and practices of public utilities.

If FE’s requested relief is granted, cost responsibility for payments made pursuant to the Emergency Order will be recovered from consumers throughout the PJM region, including Delaware residents. The Delaware DPA strongly objects to the request and reserves the right to supplement this preliminary pleading to explain, in detail, because the request is onerous, unjustified and unlawful, and should not be granted. In addition, FE’s requested relief includes not only its assets but also impermissibly demands the same relief for the entire nuclear and coal generation fleet without any demonstration that such relief is warranted.

The Delaware DPA moves for intervention under Rule 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure. In conformity with Rule 214(b)(2), the Delaware DPA has a significant and direct interest in the outcome of this proceeding as every electricity customer in this State will be immediately and irreparably affected. The Delaware DPA’s participation in this proceeding is in the public interest.

## **III. SERVICE OF DOCUMENTS**

The following persons are designated by the Delaware DPA to receive service and communications on its behalf with regard to this proceeding:

Andrew C. Slater  
Delaware Public Advocate  
29 S. State Street  
Dover, DE 19901  
Telephone: (302)241-2550  
Email: Andrew.slater@state.de.us

Ruth Ann Price  
Delaware Deputy Public Advocate  
Carvel State Office Building  
820 N. French Street, Suite 4  
Wilmington, DE 19801  
Telephone: (302) 241-2555  
Email: [ruth.price@state.de.us](mailto:ruth.price@state.de.us)

Regina A. Iorii  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street, 6th Floor  
Wilmington, DE 19801  
Telephone: (302) 577-8159  
Email: [regina.iorii@state.de.us](mailto:regina.iorii@state.de.us)

#### IV. STATEMENT OF OPPOSITION

Rule 214(b)(1) requires the movant to state its preliminary position. The Delaware Division of the Public Advocate opposes the relief sought by FES. FES has not provided that it or other coal and nuclear resources cited in their request needs the requested relief. FES has not presented a credible scintilla of evidence to show that an emergency exists of any magnitude and definitely not one that justifies the application of Section 202(c) of the Federal Power Act. On January 8, 2018, the Federal Energy Regulatory Commission ("FERC") initiated a proceeding, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*, Docket No. AD18-7-000, to comprehensively and thoughtfully examine the issues of resilience presented in FES's request. FES demand for emergency relief intends to circumvent FERC's current deliberative proceeding in which all interested parties have an opportunity to be heard.

Delaware DPA respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES request before ruling on the request. The Delaware DPA urges the Department to deny the request as no emergency has been shown. In the alternative, Delaware DPA encourages the Department to order a 60-day comment period.

## V. CONCLUSION

For the reasons set forth above, DE DPA respectfully requests that the Department grant its motion to intervene in this proceeding. Further, the Delaware DPA requests the Department reject the FES request, or, in the alternative, provide all interested parties with 60 days to file comments.

Respectfully submitted,

/s/ Andrew C. Slater

By \_\_\_\_\_

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Delaware Public Advocate  
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Ruth Ann Price  
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Regina A. Iorii  
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Email: [regina.iorii@state.de.us](mailto:regina.iorii@state.de.us)

Dated: April 3, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Dover, Delaware this 3rd day of April, 2018.

/s/ Andrew C. Slater

By \_\_\_\_\_

Andrew C. Slater  
Delaware Public Advocate  
29 S. State Street  
Dover, DE 19901  
Telephone: (302)241-2550  
Email: Andrew.slater@state.de.us

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant  
to Federal Power Act Section 202(c) of  
FirstEnergy Solutions Corp.**        )

**DOE Docket No. \_\_\_\_\_**

**MOTION TO INTERVENE OF THE DELAWARE PUBLIC SERVICE COMMISSION**

The Delaware Public Service Commission (“Delaware PSC”) hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a letter (“FES Request”) to the Honorable James Richard Perry, Secretary of the Department of Energy (“Department”), requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. (“PJM”) territory requiring immediate intervention. FES requests two forms of relief: that the Secretary (a) order “certain existing nuclear and coal-fired generators . . . to enter into contracts” with PJM to generate and transmit energy, capacity, and ancillary services to “maintain the stability of the electric grid” and (b) order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide” to energy markets and the public. The FES



Request was served on over 100 owners of generation, transmission, or distribution assets, state public utility commissions, including the Delaware PSC, and others.

## **II. MOTION TO INTERVENE**

The Delaware PSC is an agency of the State of Delaware responsible for ensuring safe, reliable, and reasonably priced utility services for Delaware consumers.<sup>1</sup> The Delaware PSC is a State Commission as defined in Section 1.101(k) of the Commission's Rules of General Applicability, 18 C.F.R. §1.101(k).

If FE's requested relief is granted, cost responsibility for payments made pursuant to the Emergency Order will be recovered from consumers throughout the PJM region, including Delaware residents. The Delaware PSC strongly objects to the FES Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the FES Request is unsupported, unlawful, and should be rejected.

The Delaware PSC moves for intervention under Rule 214 of the Commission's Rules of Practice and Procedure.<sup>2</sup> In conformity with Rule 214(b)(2), the Delaware PSC has a significant and direct interest in the outcome of this proceeding as every electricity customer in this State will be immediately and severely affected. The Delaware PSC's participation in this proceeding is in the public interest.

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<sup>1</sup> See 26 Del. C. §§ 202(a), 303(a).

<sup>2</sup> The Commission's Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. See Motion of PJM Industrial Customer Coalition to Intervene, filed in this proceeding on April 2, 2018 at n. 1.

### **III. SERVICE OF DOCUMENTS**

The following persons are designated by the Delaware PSC to receive service and communications on its behalf with regard to this proceeding:

Matthew Hartigan  
Acting Executive Director  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Dover, Delaware 19904  
(302) 736-7500  
[Matthew.Hartigan@state.de.us](mailto:Matthew.Hartigan@state.de.us)  
[PSC\\_FERC@state.de.us](mailto:PSC_FERC@state.de.us)

Joe DeLosa  
Public Utility Analyst  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Dover, Delaware 19904  
(302) 736-7519  
[joseph.delosa@state.de.us](mailto:joseph.delosa@state.de.us)

### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. The Delaware PSC opposes the departure from competitive markets sought by FES. The FES Request failed to make the requisite showing of an emergency under the definition of Section 202(c) of the Federal Power Act and instead misinterpreted available data to support its “general dissatisfaction with the PJM markets or its competitive position therein.”<sup>3</sup> In a similar proceeding, responding to nearly identical arguments,<sup>4</sup> the Commission utilized its relevant industry expertise and determined that, “[w]hile some commenters allege grid resilience or reliability issues [exist] due to potential retirements of particular resources, we find that these

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<sup>3</sup> PJM letter to The Honorable James Richard Perry, filed in this proceeding on March 30, 2018, at n. 1.

<sup>4</sup> See Comments of FES et al. in support of the Grid Reliability and Resilience Pricing Notice of Proposed Rulemaking. Commission Docket No. RM18-1. Oct. 23, 2017.

assertions do not demonstrate the unjustness or unreasonableness of the existing RTO/ISO tariffs. In addition, the extensive comments submitted by the RTOs/ISOs do not point to any past or planned generator retirements that may be a threat to grid resilience.”<sup>5</sup> The Commission also established additional proceedings to ensure that all facets of grid reliability and resilience were thoroughly vetted in an orderly and transparent fashion.

Delaware PSC respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before issuing a determination. Accordingly, the Delaware PSC supports the request that was filed in this proceeding on March 30, 2018, by the Electric Power Supply Association and other organizations seeking a 60-day comment period.

## V. CONCLUSION

For the reasons set forth above, the Delaware PSC respectfully requests that the Department grant its motion to intervene in this proceeding. Further, the Delaware PSC asks that the Department reject the FES Request, or, in the alternative, provide all interested parties with 60 days to file comments.

April 3, 2018

Respectfully submitted,

/s/ Matthew Hartigan

Matthew Hartigan  
Acting Executive Director  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Dover, Delaware 19904  
(302) 736-7500  
Matthew.Hartigan@state.de.us

---

<sup>5</sup> 162 FERC ¶ 61,012 (2018) at P 15. (internal citations omitted).

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Dover, D.E. this 3rd day of April, 2018.

**/s/ Joseph DeLosa III**

Joseph DeLosa III

Delaware Public Service Commission



**State of New Jersey**  
**DIVISION OF RATE COUNSEL**  
140 EAST FRONT STREET, 4<sup>TH</sup> FL.  
P.O. BOX 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
*Governor*

SHEILA OLIVER  
*Lt. Governor*

STEFANIE A. BRAND  
*Director*

April 3, 2018

**Via Overnight and Electronic Mail**

The Honorable Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[the.secretary@hq.doe.gov](mailto:the.secretary@hq.doe.gov)

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[bruce.walker@hq.doe.gov](mailto:bruce.walker@hq.doe.gov)

Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[catherine.jereza@hq.doe.gov](mailto:catherine.jereza@hq.doe.gov)

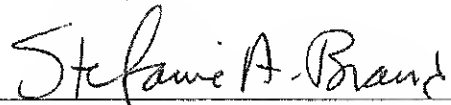
**Re: Motion of New Jersey Division of Rate Counsel to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is New Jersey Division of Rate Counsel's ("NJRC") Motion to Intervene in the proceeding concerning FirstEnergy Solutions Corp.'s ("FES") Request For Emergency Action Under Section 202(c) of the Federal Power Act. NJRC is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. *N.J.S.A.*

52:27E-50 *et seq.* NJRC is also a member of PJM Interconnection L.L.C., which will be affected by this FES request. NJRC opposes this FES request for emergency action. If this request is not denied outright, there should be a 60 day comment period, as requested by the Electric Power Supply Association *et al* on March 30, 2018.

Respectfully submitted, ,

A handwritten signature in cursive script that reads "Stefanie A. Brand". The signature is written in dark ink and is positioned above a horizontal line.

Stefanie A. Brand, Esq.

Director, New Jersey Division of Rate Counsel

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. ) DOE Docket No. \_\_\_\_\_**

**MOTION OF NEW JERSEY DIVISION OF RATE COUNSEL TO INTERVENE**

The New Jersey Division of Rate Counsel (“NJRC”), by and through its counsel, hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a request by letter (“Request”) to the Honorable Rick Perry, US Secretary of Energy, requesting that the Secretary use emergency authority under Federal Power Act Section 202(c) to find that an emergency condition exists in the PJM Interconnection L.L.C. (“PJM”) territory requiring immediate attention. In its Request, FES asks that the Secretary order “certain existing nuclear and coal-fired generators” to contract with PJM for energy, capacity and ancillary services to “maintain the stability of the electric grid.” FES also requests that the Secretary order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.” The Request has been served on over 100 affected parties.

## **II. MOTION TO INTERVENE**

NJ Rate Counsel is the administrative agency charged under New Jersey Law with the general protection of the interests of utility ratepayers. *N.J.S.A. 52:27E-50 et seq.* As the regulatory agency charged with protecting the utility ratepayers in the State of New Jersey, NJ Rate Counsel's participation is unique and in the public interest. Pursuant to C.F.R. §385.214(b)(2), NJ Rate Counsel is an "entity" within the meaning of Rule 214(b)(2) and NJRC accordingly moves for intervention.

If the FES Request is granted, cost responsibility for payments made pursuant to the Emergency Order may be recovered from consumers throughout the PJM region, including New Jersey. NJRC strongly opposes the Request and reserves the right to supplement this pleading to explain why it is unjust and unlawful.

NJ Rate Counsel will not be adequately represented by any other party to this proceeding, but may join with similarly situated entities. Good cause exists to grant this Motion to Intervene in this proceeding as NJ Rate Counsel represents NJ ratepayers directly affected by the FES request and is therefore a stakeholder in the outcome of the proceeding.

## **III. SERVICE OF DOCUMENTS**

The following persons are designated by NJRC to receive service and communications on its behalf with regard to this proceeding:

Stefanie A. Brand, Esq.  
Director, New Jersey Division of Rate Counsel  
140 East Front Street  
Trenton, NJ 08625  
Phone: (609) 984-1460  
Fax: (609) 292-2923  
Email: [sbrand@rpa.nj.gov](mailto:sbrand@rpa.nj.gov)



Brian Lipman, Litigation Manager  
Henry M. Ogden, Esq.  
Felicia Thomas-Friel, Esq.  
140 East Front Street  
P.O. Box 003  
Trenton, NJ 08625-003  
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[hogden@rpa.nj.gov](mailto:hogden@rpa.nj.gov)  
[fthomas@rpa.nj.gov](mailto:fthomas@rpa.nj.gov)

#### IV. STATEMENT OF OPPOSITION

Rule 214(b)(1) requires the movant to state its preliminary position. NJRC opposes the relief sought by FES. The available evidence, not cited in the Request, demonstrates that no need exists for the requested relief and certainly no emergency exists that would justify application of Section 202(c) of the Federal Power Act.

NJRC respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before ruling on the Request. Accordingly, NJRC supports the March 30, 2018 filing by the Electric Power Supply Association and other organizations requesting a 60-day comment period.

## V. CONCLUSION

For all the foregoing reasons, NJRC respectfully requests that the Department grant NJRC's motion to intervene in this proceeding, and, if the Department does not reject the FES Request outright, provide all interested parties 60 days to file comments on the Request.

Respectfully submitted,

NEW JERSEY DIVISION OF RATE COUNSEL

/s/ Stefanie A. Brand  
Stefanie A. Brand, Esq.  
Director, New Jersey Division of Rate Counsel  
140 East Front Street  
Trenton, NJ 08625  
Phone: (609) 984-1460  
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Email: [sbrand@rpa.nj.gov](mailto:sbrand@rpa.nj.gov)

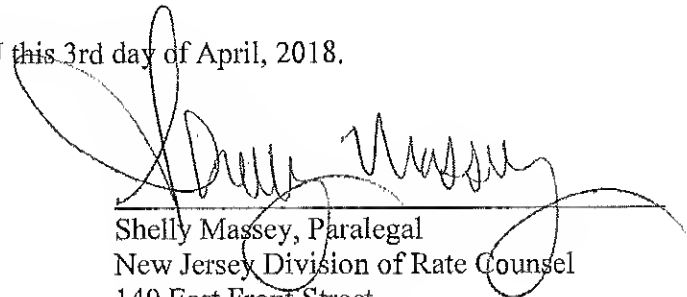
Brian Lipman, Litigation Manager  
Henry M. Ogden, Esq.  
Felicia Thomas-Friel, Esq.  
140 East Front Street  
P.O. Box 003  
Trenton, NJ 08625-003  
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Email: [blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)  
[hogden@rpa.nj.gov](mailto:hogden@rpa.nj.gov)  
[ftthomas@rpa.nj.gov](mailto:ftthomas@rpa.nj.gov)

Counsel to the New Jersey Division of Rate Counsel  
Dated: April 3, 2018

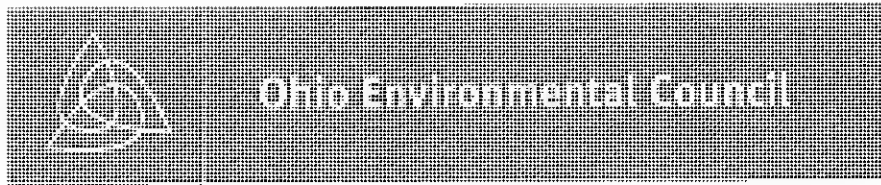
### CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via overnight mail or electronic transmission the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Trenton, NJ this 3rd day of April, 2018.



Shelly Massey, Paralegal  
New Jersey Division of Rate Counsel  
140 East Front Street  
Trenton, NJ 08625  
Phone: (609) 984-1460  
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**SUBMITTED ELECTRONICALLY VIA E-MAIL**

April 3, 2018

Hon. Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
The.Secretary@hq.doe.gov

Bruce Walker  
Assistant Secretary, Office of Elec. Delivery & Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
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Catherine Jereza  
Deputy Assistant Secretary, Office of Elec. Delivery & Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington D.C. 20585  
Catherine.Jereza@hq.doe.gov

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

On behalf of the Ohio Environmental Council ("OEC") and its thousands of individual members throughout the state of Ohio, I write today to object to FirstEnergy Solutions Corp.'s request for an emergency order under Section 202(c) of the Federal Power Act. On March 29, 2018, FirstEnergy Solutions Corp. ("FES") formally requested from the Department of Energy ("Department") an emergency order asking that all merchant coal and nuclear generating units in the PJM Interconnection ("PJM") footprint with at least 25 days of onsite fuel be provided nonmarket, cost-of-service rates and guaranteed profits for at least four years.<sup>1</sup> This request is just one in a number of attempts by FES, its parent First Energy Corp., and affiliate distribution companies (collectively "FirstEnergy") to request drastic increases in consumer-funded subsidies for its otherwise unprofitable and unsustainable fossil fuel generation resources—and should be denied by the Department.

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<sup>1</sup> Letter from FirstEnergy Solutions Corporation to the Honorable James Richard Perry (Mar. 29, 2018) (hereinafter "application").

## Interest and Standing

Throughout its 49-year history, OEC has been the state of Ohio's leading advocate for fresh air, clean water, and sustainable energy use in the state, and its members will be injured if this request is granted. Many of the OEC's members live and work in the shadows of, and experience the pollution from, the coal-fired and nuclear power plants FES is hoping to subsidize under this proposal. Even more of OEC's members will be forced to pay for this proposal's bailout of the FES fossil fuel fleet. If this order is approved, the OEC and its members throughout Ohio would be injured not only from the continuing environmental and human health degradation from these plants, but also the escalated costs reflected on their energy bills.

The OEC concurs with the arguments made by our national colleagues at Environmental Defense Fund ("EDF"), Natural Resources Defense Council ("NRDC"), Environmental Law and Policy Center ("ELPC") and Sierra Club, and others that the FES application would impose enormous cost upon American homeowners and businesses without benefit; and undermine the competitive marketplace.<sup>2</sup> To both support and supplement those comments in opposition, the OEC provides the following perspective and urges the Department of Energy to deny the FirstEnergy application requesting an emergency designation for its uneconomic power plants.

### **FirstEnergy's 202(c) application is the latest in a series of requests for a bailout.**

The OEC has seen proposals such as this from FirstEnergy before, and disagrees with its suggestion that this request is an emergency of any sort. The Department is just the next venue in which First Energy Corp. family of companies are hoping secure additional revenue sources for its less-than-profitable generation resources. The OEC first opposed a version of FES's bailout proposal in 2014 when FirstEnergy proposed a power purchase agreement ("PPA") before the Public Utilities Commission of Ohio ("PUCO"). Under the proposed PPA, FES would transfer to the FirstEnergy Distribution Companies the right to sell all output, including energy, capacity, ancillaries, and environmental attributes from the FES share of the Ohio Valley Electric Corporation ("OVEC") which includes two sixty-year old, coal-fired power plants (Kyger Creek in Cheshire, Ohio and Clifty Creek in Madison, Indiana), the fifty-two year old Sammis coal-fired plant, and the Davis-Bessie nuclear plant. The PPA would have been secured or guaranteed by payments made by FirstEnergy customers under a new fee which they called the "Retail Rate Stabilization Rider" or Rider RRS.<sup>3</sup>

While the PUCO approved this PPA on March 31, 2016, this original approval was short lived, for on April 31, 2016, the Federal Energy Regulatory Commission ("FERC") issued an Order granting a complaint against FirstEnergy filed by a number of energy organizations and companies.<sup>4</sup> Specifically, FERC granted the Complainant's request "that the Commission rescind the waiver of its affiliate power sales restrictions that it previously granted to FirstEnergy Corporation's market-regulated power sales

<sup>2</sup> See Joint Comments of EDF and NRDC submitted on March 30, 2018; See also Comments of the Sierra Club Submitted March 30, 2018

<sup>3</sup> *In The Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of and Electric Security Plan*, PUCO Case No 14-1297-EL-SSO.

<sup>4</sup> *Order Granting Complaint*, 155 FERC ¶ 61,101, (April 27, 2016).

affiliates.”<sup>5</sup> Shortly after FERC’s order, FirstEnergy came back to the PUCO, this time asking not for a PPA, but credit support to ensure the Companies are not downgraded from investment grade, and to circumvent the FERC’s decision.

PUCO approved FirstEnergy’s credit support rider which therein forced customers in FirstEnergy’s territory to collectively pay up to \$204 million more per year on their electric bills, for up to five years. Over \$132 million of this is direct payment through a rider on customers’ bills to bolster the Company’s credit rating, and the rest would go to cover the Company’s taxes. Fundamentally, the impetus for this case is the fact that FirstEnergy made a series of unfavorable business decisions, refused to innovate, and doubled down on aging fossil fuel resources at a time when other utilities were transitioning to cleaner, more efficient resources. Presently, the OEC and its partners have appealed the PUCO decision to approve the FirstEnergy credit support mechanism to the Supreme Court of Ohio.<sup>6</sup>

Contemporaneously with the PUCO proceedings, FirstEnergy approached the General Assembly to create a Zero Emission Nuclear (ZEN) program for the state of Ohio, patterned after similar programs in Illinois and New York. The ZEN mechanism, if approved, would allow FirstEnergy to collect approximately \$300 million each year for approximately 16 years, meaning a ratepayer impact of approximately \$4.8 billion over the term of the program anticipated that this program would result in a 5% increase for the average family, and a 5-9% percent increase for business customers. However, the legislation has garnered little to no political appetite to saddle customers with a \$4 billion nuclear rate hike, and has stalled in the Ohio legislature.

#### **FES’s attempt to use Section 202(c) is unlawful**

With FirstEnergy running into stumbling blocks with state decision makers, it has turned its eyes to the US Department of Energy and FERC in the present application, seeking compensation for “operating expenses, costs of capital and debt, and a fair return on equity and investment” on these uneconomic plants. To obtain this relief, FES is requesting an emergency order. Yet, FES’s application is asking the Department of Energy to disregard federal statute and case law to give it millions of dollars to bail out its failing fossil fuel fleet.

Section 202(c) limits relief to “emergencies” that exist during continuances of war or times of “sudden” increases in the demand of electricity.<sup>7</sup> Further, the emergencies envisioned by Section 202(c) are expressly meant to address “temporary” conditions with short-term results.

FES’s “emergency” surrounds nuclear facility closures scheduled to retire 2-3 years from now and coal facilities that *may* retire based on announcements. Thus on its face, the request is not at all temporary or short-term, but looks to implement long-term policy on issues that *may* emerge years in the future. FES raises the issue of preserving “resiliency” during the “Bomb Cyclone” and other winter weather with its

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the form of an Electric Security Plan*, Ohio Supreme Court Case No. 2017-1664, available at <https://www.supremecourt.ohio.gov/clerk/ecms/#/caseinfo/2017/1664>.

<sup>7</sup> 16 U.S.C. 824a (c)(1).

evocation of the NETL Report in its application. However, PJM seemingly rebuffs the idea that its system's performance during extreme winter weather events poses a looming resiliency crisis.<sup>8</sup> In fact, PJM, in a statement and letter to U.S. DOE Secretary Perry, stated that there "is no immediate emergency" and attributed the situation that FES finds itself in, not as based on a reliability or resilience crisis, but "fundamentally a corporate issue." Furthermore, the PUCO contradicted FirstEnergy's stance that this is an emergency crisis and FES's recent bankruptcy filing by issuing a statement that "[t]here is no reason for customers of [FirstEnergy Solutions] - or anyone else in Ohio - to be concerned about whether or not they will have electricity. They will."<sup>9</sup>

Case law interpreting Section 202(c) supports denial of FirstEnergy's request. *Richmond Power & Light v. FERC*, a case began in response to the 1973 oil embargo, where the FERC chose not to invoke its emergency authority despite concerns of "dire oil shortfalls."<sup>10</sup> While the Court's decision in *Richmond Power & Light v. FERC* was more than 40 years ago, its reasoning is apt for addressing FES's current request. There, the court ruled that Section 202(c) "speaks of 'temporary' emergencies, epitomized by wartime disturbances, and is aimed at situations in which demand for electricity exceeds supply and not at those in which supply is adequate but a means of fueling its production is in disfavor."<sup>11</sup> Here, a decreased desire for fossil fuels and a decreased demand now make inefficient and old coal and nuclear generation uneconomic in PJM's competitive markets and PJM and FERC repeatedly have confirmed that there is not a reliability crisis.

As the OEC expressed in the aforementioned PUCO proceedings, FirstEnergy had access to a state law mechanism and opportunity to request emergency rate structure.<sup>12</sup> FirstEnergy chose not to seek that opportunity, presumably since facts could not support that FirstEnergy's situation was a true emergency. Furthermore, FirstEnergy's profit guarantee request substantially mirrors the Grid Resiliency Pricing proposal that FERC unanimously rejected less than three months ago, finding there was no urgent threat to the grid's reliability.<sup>13</sup> Similar to that proposal, FirstEnergy's current rendition of its bailout request asks that coal and nuclear plants in PJM be provided a non-market cost-of-service plus profit rate. Instead of seizing the opportunity to request a rehearing of FERC's rejection of the Grid Resiliency Pricing, where the evidence was not on their side, FES chose the current emergency filing. The Department should be skeptical that the FES application meets a reasonable definition of emergency.

## Conclusion

FES seeks to impose enormous cost upon consumers, and seeks to undermine the competitive markets. Any "emergency" that FES has is merely a hardship to its bottom line, and not to the reliability of the

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<sup>8</sup> PJM Interconnection, PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018 (Feb. 26, 2018), available at <http://www.pjm.com/-/media/library/reports-notices/weatherrelated/20180226-january-2018-cold-weather-event-report.ashx>.

<sup>9</sup> Statement of PUCO Chairman Haque on FES bankruptcy (April 1, 2018), available at <https://www.puco.ohio.gov/media-room/media-releases/puco-chairman-haque-statement-on-fes-bankruptcy/>.

<sup>10</sup> *Richmond Power & Light v. FERC*, 574 F.2d 610 (D.C. Cir. 1977).

<sup>11</sup> *Id.* at 613.

<sup>12</sup> Ohio Rev. Code 4928.142(D)(4) states, in part: "the commission may adjust the electric distribution utility's most recent standard service offer price by such just and reasonable amount that the commission determines necessary to address any emergency that threatens the utility's financial integrity..."

<sup>13</sup> Reliability and Resiliency Pricing, Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 FERC ¶ 61,012 (Jan. 8, 2018).

regional electric grid. Thus, any resolution of the Company's financial situation should be left to FES's own devices, and not the pocketbooks of everyday Ohioans. For the reasons outlined above, the OEC asks the Department of Energy to deny the FirstEnergy profit guarantee request.

**/s/ Trent A. Dougherty**

Trent Dougherty

*General Counsel*

Ohio Environmental Council

1145 Chesapeake Avenue, Suite I

Columbus, OH 43212

TDougherty@theOEC.org



UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY

**Request for Emergency Order Pursuant** )  
**To Federal Power Act Section 202(c) By** )  
**FirstEnergy Solutions Corp.** ) **DOE Docket No. \_\_\_\_\_**

**MOTION OF DISTRICT OF COLUMBIA**  
**OFFICE OF THE PEOPLE'S COUNSEL'S**  
**MOTION TO INTERVENE**

District of Columbia Office of the People's Counsel ("DC-OPC" or "Office"), by and through its counsel, hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. ("FES"), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

## **I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES issued a letter (“Request”) to the Energy Secretary James Richard Perry requesting that the Secretary invoke emergency authority under Federal Power Act Section 202(c) to find that an emergency condition exists in the PJM Interconnection (“PJM”) territory that requires immediate intervention. In its request, FES seeks for the Secretary to order “certain existing nuclear and coal-fired generators” to contract with PJM for energy, capacity, and ancillary services to “maintain the stability of the electric grid.” Further, FES requests that the Secretary order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide.” FES has served the Request on numerous affected parties.

## **II. MOTION TO INTERVENE**

DC-OPC is an independent agency of the District of Columbia government and serves as the statutory representative of District of Columbia ratepayers and consumers with respect to utility matters. By law, DC-OPC is the advocate for consumers of natural gas, electric and telephone services in the District and serves as a party to all utility-related proceedings before the District of Columbia Public Service Commission. Additionally, the Office represents the interests of District ratepayers before federal regulatory agencies, such as DOE, EPA, FERC and the FCC. The Office is also authorized to investigate the operation and valuation of utility companies independent of any pending proceeding.

The Office's mandate is to advocate the provision of quality utility service and equitable treatment of rates that are just, reasonable, and nondiscriminatory as well as to assist individual consumers in disputes with utility companies about billing or services; and to provide technical assistance and consumer education to lay advocates and community groups. In addition, in defining its positions while advocating on matters pertaining to the operation of public utility or energy companies, the Office considers the public safety, the economy of the District of Columbia, the conservation of natural resources, and the preservation of environmental quality.

If the Request of FES is granted, payments made pursuant to the Emergency Order may be recovered from consumers throughout the PJM region, which includes the District of Columbia ratepayers. DC-OPC opposes the Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the Request would result in unjust treatment and therefore should be rejected.

DC-OPC moves to intervene under Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure. As Rule 214(b)(2) requires, DC-

OPC has a significant and direct interest in this proceeding's outcome. Further, DC-OPC's role as an advocate for D.C. ratepayers makes DC-OPC's participation in the public interest.

### **III. SERVICE OF DOCUMENTS**

DC-OPC designates the following persons to receive service and communications on its behalf with regard to this proceeding:

Sandra Mattavous-Frye, Esq.  
People's Counsel  
Office of the People's Counsel  
1133 15<sup>th</sup> Street NW, Suite 500  
Washington, DC 20005  
(202) 727-3071  
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Frederick Heinle, Esq.  
Adrienne Mouton-Henderson, Esq.  
Assistant People Counsels  
1133 15<sup>th</sup> Street NW, Suite 500  
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[fheinle@opc-dc.gov](mailto:fheinle@opc-dc.gov)  
[ahenderson@opc-dc.gov](mailto:ahenderson@opc-dc.gov)

### **IV. STATEMENT OF OPPOSITION**

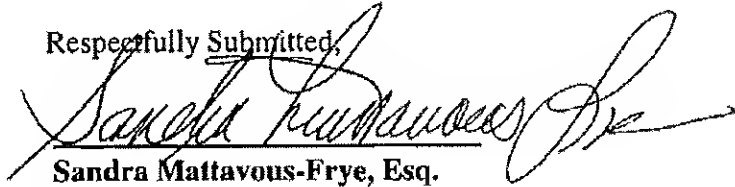
Rule 214(b)(1) requires the movant to state its preliminary position. DC-OPC opposes granting the relief FES seeks. The available evidence, not cited in this Request, demonstrates that no emergency condition exists and the requested relief is unnecessary.

DC-OPC respectfully urges the Department to give all interested parties sufficient time to present their responses to the Request before the Department rules on the Request. Accordingly, DC-OPC supports the Electric Power Supply Associations' request filed Friday, March 30, 2018 seeking a 60-day comment period.

**V. CONCLUSION**

For the foregoing reasons, DC-OPC respectfully requests that the Department grant DC-OPC's motion to intervene in this proceeding and, if the Department does not reject the FES Request outright, provide all interested parties 60 days to file comments on the Request.

Respectfully Submitted,

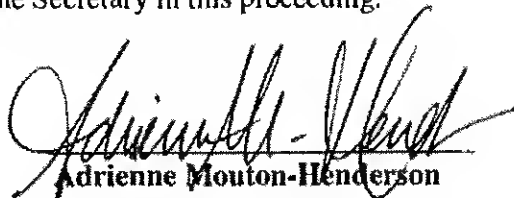


**Sandra Mattavous-Frye, Esq.**  
People's Counsel  
Office of the People's Counsel  
1133 15<sup>th</sup> Street NW, Suite 500  
Washington, DC 20005

Dated: April 4, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 4<sup>th</sup> day of April 2018, served via first-class mail, electronic transmission, or hand delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.



**Adrienne Mouton-Henderson**  
Assistant People's Counsel  
Office of the People's Counsel  
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[ahenderson@opc-dc.gov](mailto:ahenderson@opc-dc.gov)

**Standley, Erica**

---

**From:** William Fields -OPC- <william.fields@maryland.gov>  
**Sent:** Wednesday, April 04, 2018 3:32 PM  
**To:** Secretary Perry; Walker, Bruce; Jereza, Catherine  
**Subject:** First Energy Solutions Corp. Request for Emergency Action  
**Attachments:** 04042018 - Motion to Intervene at DOE Re FirstEnergy - FINAL.pdf

Please find attached the Motion to Intervene of the Maryland Office of People's Counsel regarding the request of FirstEnergy Solutions Corp. for emergency action.

Thank you for your kind attention to this matter.

Bill Fields  
Maryland Office of People's Counsel  
410-767-8153

PAULA M. CARMODY  
PEOPLE'S COUNSEL

THERESA V. CZARSKI  
DEPUTY PEOPLE'S COUNSEL

STATE OF MARYLAND



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WILLIAM F. FIELDS  
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JACOB M. OUSLANDER  
MIKHAIL RAYKHER  
ANNA K. RYON

April 4, 2018

VIA U.S. MAIL AND ELECTRONIC MAIL

The Honorable Rick Perry  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
[The.secretary@hq.doe.gov](mailto:The.secretary@hq.doe.gov)

Mr. Bruce Walker  
Assistant Secretary, DOE Office of Elec. Deliver & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
Washington, DC 20585  
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Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
1000 Independence Ave., S.W.  
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[Catherine.jereza@hq.doe.gov](mailto:Catherine.jereza@hq.doe.gov)

**Re: Motion to Intervene of the Maryland Office of People's Counsel**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Attached is the Motion to Intervene of the Maryland Office of People's Counsel (MPC) in the matter concerning FirstEnergy Solutions Corp.'s (FirstEnergy Solutions)

Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza  
April 4, 2018  
Page 2

Request for Emergency Action under Section 202(c) of the Federal Power Act. MPC is an independent state agency established to represent the interests of residential customers in utility matters. Maryland Public Utilities Code Annotated, Section 2-205(b)(2016). All of Maryland is in the PJM Interconnection, L.L.C. region and the relief requested by FirstEnergy Solutions would affect the cost of electricity for Maryland electricity customers. MPC opposes FirstEnergy's emergency request. If this request is not denied outright, the department should establish an extended period for public comment before taking action.

Respectfully Submitted,

Paula M. Carmody  
People's Counsel



William F. Fields  
Senior Assistant People's Counsel

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. ) DOE Docket No. \_\_\_\_\_**

**MOTION TO INTERVENE OF THE MARYLAND OFFICE OF PEOPLE'S COUNSEL**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission"), 18 C.F.R. §§385.212 and 385.214, the Maryland Office of People's Counsel ("MPC") hereby seeks Leave to Intervene in the above-captioned proceeding. In support of this Motion, MPC states the following:

1. MPC is an independent state agency that was established to represent the interests of residential consumers in utility cases. Pursuant to Maryland Public Utility Companies Code Annotated, Section 2-205(b)(2016), the People's Counsel "may appear before any federal or state agency as necessary to protect the interests of residential...users of [gas, electricity or other regulated services]."

2. The name, address, telephone, facsimile and e-mail address of the Maryland Office of People's Counsel's designated representative for receipt of service in this proceeding is:

William F. Fields  
Senior Assistant People's Counsel  
Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, Maryland 21202  
(410) 767-8150  
(410) 333-3616 (facsimile)  
[William.fields@maryland.gov](mailto:William.fields@maryland.gov) (e-mail)

3. On March 29, 2018, FirstEnergy Solutions, Corp. ("FES") filed a letter requesting emergency action by the Secretary of Energy pursuant to Section 202(c) of the Federal Power Act.



FES requests that the Secretary issue an order that would require PJM Interconnection, L.L.C. ("PJM") to contract with generating plant owned by FES, as well as coal and nuclear plants owned by other entities, to purchase the output of the plants.

4. In January, 1999, the Maryland General Assembly passed the Electric Customer Choice and Competition Act of 1999. Maryland Public Utility Companies Code Annotated, Section 7-501, *et. seq.* (2007). This act institutes competition for retail electric service beginning July 1, 2000. All retail customers in Maryland purchase electricity from suppliers that operate in the PJM market.

5. If the FES request is granted, there would be a significant cost impact on consumers throughout PJM, including customers in Maryland.

6. The specific interests of Maryland residential consumers are not adequately represented by other parties to this matter, and that MPC's intervention is necessary in order to protect these interests.

7. MPC is opposed to the FES request. FPA §202(c) requires a finding of an emergency in order to act. All available evidence indicates that there is no emergency at this time and no justification for granting the relief requested by FES. PJM has announced that it has begun its evaluation of the reliability impacts of the plant closings announced by FES. There are means under the existing PJM tariff to address any reliability issues that are found to exist if the plants retire. The PJM tariff allows for a 90-day window for the PJM analysis process. The announced FES plant retirements are far more than 90 days in the future. There will be more than adequate time to address any reliability concerns that arise from the potential closing of the FES plants. With respect to generating plants owned by other entities, there is no basis for finding that any action with respect to those plants is necessary or appropriate.

8. MPC respectfully requests that the Secretary deny the FES request. If the request

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of April, 2018, a copy of the forgoing Motion For Leave To Intervene Of the Maryland Office Of People's Counsel was served on each person designated below:

Rick C. Giannantonio  
General Counsel  
FirstEnergy Solutions Corp.  
76 South Main Street  
Akron, OH 44308  
TEL: (330) 384-5893  
giannanr@firstenergycorp.com

William S. Sherman  
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William F. Fields  
Senior Assistant People's Counsel

Maryland Office of People's Counsel  
6 St. Paul Street, Suite 2102  
Baltimore, Maryland 21202  
(410) 767-8150

**From:** [OE Webmaster](#)  
**To:** [Bittner, Kathy \(CONTR\)](#)  
**Subject:** FW: Petition to Intervene In FirstEnergy Solutions FPA Section 202(c) Request  
**Date:** Friday, April 06, 2018 7:42:53 AM  
**Attachments:** [DOE First Energy Solutions Case Petition to Intervene DC PSC \(04-05-2018\).pdf](#)

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Hi Kathy:

This came in through the OE Webmaster.

Thanks,  
Debra

---

**From:** Berry, Craig (PSC) [mailto:[cberry@psc.dc.gov](mailto:cberry@psc.dc.gov)]  
**Sent:** Thursday, April 05, 2018 4:59 PM  
**To:** Secretary Perry <[The.Secretary@hq.doe.gov](mailto:The.Secretary@hq.doe.gov)>; OE Webmaster <[OEWebmaster@hq.doe.gov](mailto:OEWebmaster@hq.doe.gov)>  
**Cc:** Fygi, Eric <[Eric.Fygi@hq.doe.gov](mailto:Eric.Fygi@hq.doe.gov)>  
**Subject:** Petition to Intervene in FirstEnergy Solutions FPA Section 202(c) Request

Dear Secretary Perry and Assistant Secretary Walker:

Attached is the Petition to Intervene of the Public Service Commission of the District of Columbia in the DOE case concerning the Request for Emergency Order Pursuant to Federal Power Act Section 202(c) of FirstEnergy Solutions Corporation.

If there are any issues with the attached filing please contact me.

Craig Berry

Craig W. Berry  
Attorney Advisor  
Office of the General Counsel  
Public Service Commission of the District of Columbia  
1325 G Street, N.W., Suite 800  
Washington, DC 20005  
202-626-9181  
[cberry@psc.dc.gov](mailto:cberry@psc.dc.gov)

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )**

**DOE Docket No. \_\_\_\_\_**

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**MOTION TO INTERVENE  
OF THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**

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The Public Service Commission of the District of Columbia (“D.C. PSC”) hereby moves to intervene in the above-captioned proceeding and protest the March 29, 2018, Request for Emergency Order Pursuant to Federal Power Act (“FPA”) Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES submitted a letter (“FES Request”) to the Honorable James Richard Perry, Secretary (“Secretary”) of the Department of Energy (“Department”), requesting that the Secretary use emergency authority under Section 202(c) of the FPA to find that an emergency condition exists in the PJM Interconnection, L.L.C. (“PJM”) territory requiring immediate intervention. FES requests that the Secretary: (a) order “certain existing nuclear and coal-fired generators . . . to enter into contracts” with PJM to generate and transmit energy, capacity, and ancillary services to “maintain the stability of the electric grid;” and (b) order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide” to energy markets and the public.

## II. MOTION TO INTERVENE

The D.C. PSC is an independent agency of the District of Columbia created by the District of Columbia Home Rule Charter to ensure that public utilities doing business in the District provides reasonable, safe, and adequate service and facilities and that their rates are just and reasonable. The D.C. PSC has plenary supervision over all electric companies in the District of Columbia (D.C. Code §§ 1-204.93 and 34-301 (2001 Ed.)). Accordingly, the D.C. PSC is a “state commission” within the meaning of Rule 214(a)(2) of the Commission’s Rules of Practice and Procedure and is entitled to intervene in this proceeding as of right.

The District of Columbia is within the footprint of PJM, and if FES’s requested relief is granted, responsibility for payments made pursuant to the Emergency Order will be recovered from consumers throughout the PJM region, including District of Columbia residents. The D.C. PSC strongly objects to the FES Request and reserves the right to supplement this preliminary pleading to explain, in detail, why the FES Request is unsupported, unlawful, and should be rejected.

The D.C. PSC moves for intervention under Rule 214 of the Commission’s Rules of Practice and Procedure.<sup>1</sup> In conformity with Rule 214(b)(2), the D.C. PSC has a significant and direct interest in the outcome of this proceeding as every electricity customer in the District of

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<sup>1</sup> The Commission’s Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. See DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. EO-05-01 (December 30, 2005) at 2.

Columbia will be immediately and severely affected. The D.C. PSC's participation in this proceeding is in the public interest.

### **III. SERVICE OF DOCUMENTS**

The following persons are designated by the D.C. PSC to receive service and communications on its behalf with regard to this proceeding:

Christopher Lipscombe  
General Counsel  
D.C. Public Service Commission  
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### **IV. STATEMENT OF OPPOSITION**

Rule 214(b)(1) requires the movant to state its preliminary position. The D.C. PSC opposes the departure from competitive markets sought by FES. The FES Request failed to make the requisite showing of an "emergency" under the definition of Section 202(c) of the FPA and instead misinterpreted available data to support its "general dissatisfaction with the PJM markets or its competitive position therein."<sup>2</sup> The Secretary has only granted a request of this nature in five (5)

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<sup>2</sup> PJM letter to The Honorable James Richard Perry, filed in this proceeding on March 30, 2018, at n. 1.

instances; in each, a clear emergency had been demonstrated. For example, in 2005, the Secretary granted the D.C. PSC's petition for emergency relief under Section 202(c) when one of the three close proximity generating facilities serving the District of Columbia was threatened with closure due to environmental compliance issues, because: (1) there was a "reasonable possibility an outage w[ould] occur that would cause a blackout;" (2) "the number and importance of facilities and operations in our Nation's Capital that would be potentially affected by such a blackout, the extended number of hours of any blackout that might in fact occur;" and (3) "the current situation violates applicable reliability standards."<sup>3</sup> Our petition, which clearly demonstrated an immediate and sustained threat to grid reliability, stands in sharp contrast to the FES Request, which is overbroad and fails to substantiate the requested relief.

In a similar proceeding, responding to nearly identical arguments,<sup>4</sup> the Commission utilizing its relevant industry expertise, determined that, "[w]hile some commenters allege grid resilience or reliability issues [exist] due to potential retirements of particular resources, we find that these assertions do not demonstrate the unjustness or unreasonableness of the existing RTO/ISO tariffs. In addition, the extensive comments submitted by the RTOs/ISOs do not point to any past or planned generator retirements that may be a threat to grid resilience."<sup>5</sup> The Commission also established additional proceedings to ensure that all facets of grid reliability and resilience were thoroughly vetted in an orderly and transparent fashion.

---

<sup>3</sup> See Order No. 202-05-3, *District of Columbia Public Service Commission*, Docket No. EO-05-01 (December 20, 2005) at 6.

<sup>4</sup> See Comments of FES et al. in support of the Grid Reliability and Resilience Pricing Notice of Proposed Rulemaking, Commission, Docket No. RM18-1 (October 23, 2017).

<sup>5</sup> 162 FERC ¶ 61,012 (2018) at P 15. (internal citations omitted).



Based on the foregoing, the FES Request should be denied. However, the D.C. PSC respectfully urges the Department to give all interested parties sufficient time to fully present their responses to the FES Request before issuing a determination. Accordingly, the D.C. PSC supports the Electric Power Supply Association's request seeking a 60-day comment period that was filed in this proceeding on March 30, 2018.

## V. CONCLUSION

For the reasons set forth above, the D.C. PSC respectfully requests that the Department grant its motion to intervene in this proceeding. Further, the D.C. PSC asks that the Department reject the FES Request on the record as it stands, or, in the alternative, provide all interested parties with 60 days to file comments.

Respectfully submitted,

/s/ Craig W. Berry  
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cberry@psc.dc.gov

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each party designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 5<sup>th</sup> day of April 2018.

/s/ Craig W. Berry  
Craig W. Berry  
Attorney Advisor  
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1325 G Street, N.W., Suite 800  
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**From:** Jereza, Catherine  
**To:** Bittner, Kathy (CONTR)  
**Subject:** FW: First Energy Solutions Corp.'s Request for Emergency Order - NJBPU Motion to Intervene  
**Date:** Thursday, April 05, 2018 5:37:25 PM  
**Attachments:** 2018-04-05 - NJBPU Motion to Intervene.pdf

---

**From:** Timothy Oberleiton [mailto:Timothy.Oberleiton@law.njoag.gov]  
**Sent:** Thursday, April 05, 2018 5:01 PM  
**To:** Secretary Perry <The.Secretary@hq.doe.gov>; Walker, Bruce <Bruce.Walker@hq.doe.gov>; Jereza, Catherine <Catherine.Jereza@Hq.Doe.Gov>  
**Cc:** Carolyn McIntosh <Carolyn.McIntosh@law.njoag.gov>; Alex Moreau <Alex.Moreau@law.njoag.gov>; Cynthia.Holland@bpu.nj.gov  
**Subject:** First Energy Solutions Corp.'s Request for Emergency Order - NJBPU Motion to Intervene

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza,

Please find attached for service upon the Department of Energy a copy of the New Jersey Board of Public Utilities' Motion to Intervene regarding the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) filed by FirstEnergy Solutions Corp., a hard copy of which has been sent via UPS Overnight Mail.

Respectfully submitted,

Timothy R. Oberleiton  
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New Jersey Office of the Attorney General  
Division of Law – Public Utilities Section  
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PHILIP D. MURPHY  
*Governor*

*State of New Jersey*  
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*Director*

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April 5, 2018

**VIA OVERNIGHT AND ELECTRONIC MAIL**

The Honorable James Richard Perry  
Secretary of Energy  
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Ms. Catherine Jereza  
Deputy Assistant Secretary  
Office of Electricity Delivery and Energy Reliability  
U.S. Department of Energy  
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**RE: Motion of the New Jersey Board of Public Utilities to Intervene**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Please accept this letter and attached Motion of the New Jersey Board of Public Utilities ("NJBP") to intervene in this proceeding concerning FirstEnergy Solutions Corp.'s ("FES") Request for Emergency Action under Section 202(c) of the Federal Power Act. If the Request is



granted, payments made pursuant to the Emergency Order may be recovered from customers (ratepayers) throughout the PJM Interconnection, L.L.C. region, including ratepayers in New Jersey.

The NJBPU is the administrative agency charged under New Jersey law with the general supervision, regulation, jurisdiction, and control over all public utilities in the State of New Jersey ("State"), including electric and gas utilities and their rates and service. N.J.S.A. 48:2-13; N.J.S.A. 48:2-21. The NJBPU is a state regulatory commission, as recognized by the Federal Power Act, 16 U.S. Code § 824, and Rule 214(a)(2) of the Federal Energy Regulatory Commission's ("FERC") Rules of Practice and Procedure, which governs intervention before FERC.

The NJBPU seeks to intervene in this proceeding in the interest of New Jersey ratepayers. Further, NJBPU opposes this FES request for emergency action and asks that the Department immediately reject the FES Request, or, in the alternative, provide all interested parties with 60 days to file comments.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: Timothy R. Oberleiton  
Timothy R. Oberleiton  
Deputy Attorney General

cc: Service List (w/encl., by electronic mail)

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )**

**DOE Docket No. \_\_\_\_\_**

**MOTION TO INTERVENE OF THE  
NEW JERSEY BOARD OF PUBLIC UTILITIES**

The New Jersey Board of Public Utilities (“NJBPU”) hereby moves to intervene in the above-captioned proceeding and protests the March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act Section 202(c) by FirstEnergy Solutions Corp. (“FES”), pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214.

**I. PROCEDURAL BACKGROUND**

On March 29, 2018, FES sent a letter (“FES Request”) to the Honorable James Richard Perry, Secretary of the Department of Energy (“Department”), requesting that the Secretary use emergency authority under Section 202(c) of the Federal Power Act to find that an emergency condition exists in the PJM Interconnection, L.L.C. (“PJM”) territory requiring immediate intervention. The FES Request seeks two forms of relief: that the Secretary (a) order “certain existing nuclear and coal-fired generators . . . to enter into contracts” with PJM to generate and transmit energy, capacity, and ancillary services to “maintain the stability of the electric grid” and (b) order PJM to “promptly compensate at-risk merchant nuclear and coal-fired power plants for the full benefits they provide” to energy markets and the public. The FES Request includes an undated

Certification of Service claiming that it was served on over 100 owners of generation, transmission, or distribution assets, state public utility commissions, including the NJBPU, and others.<sup>1</sup>

## **II. INTERVENTION**

The NJBPU is the administrative agency charged under New Jersey law with the general supervision, regulation, jurisdiction, and control over all public utilities in the State of New Jersey (“State”), including the obligation to ensure that utilities provide safe, adequate and proper service at a just and reasonable rate.<sup>2</sup> The NJBPU is a state regulatory commission, as recognized by the Federal Power Act, 16 U.S. Code § 824, and Rule 214(a)(2) of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, which governs intervention before FERC.

If the FES Request is granted, payments made pursuant to the Emergency Order may be recovered from customers (ratepayers) throughout the PJM region, including ratepayers in New Jersey. In conformity with Rule 214, the NJBPU has a significant and direct interest in the outcome of this proceeding as electricity customer throughout the PJM region, including New Jersey, will be affected. Given this risk to New Jersey ratepayers, NJBPU seeks to intervene in this proceeding and protests the FES Request. NJBPU further reserves the right to supplement this preliminary pleading to explain, in detail, why the FES Request should be rejected. NJBPU’s intervention in this proceeding is in furtherance of the public interest and should be granted.

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<sup>1</sup> NJBPU has yet to receive service of the FES Request. It appears that FES sent a copy of its Request dated March 30, 2018 to NJBPU Commissioner Richard Mroz. The Request was not received until April 4, 2018, but, regardless, was not properly served on the NJBPU.

<sup>2</sup> See N.J.S.A. 48:2-13; N.J.S.A. 48:2-21; N.J.S.A. 48:2-23.

### III. COMMUNICATIONS

All communications with respect to this matter should be addressed as follows:

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### IV. STATEMENT OF OPPOSITION

Rule 214(b)(1) requires the movant to state its preliminary position. NJBPU opposes granting the relief sought by the FES Request. The FES Request has failed to make the requisite showing of an emergency under the definition of Section 202(c). Therefore, it should be rejected.

In a similar proceeding, responding to nearly identical arguments,<sup>3</sup> the Commission determined that, “[w]hile some commenters allege grid resilience or reliability issues [exist] due to potential retirements of particular resources, we find that these assertions do not demonstrate the unjustness or unreasonableness of the existing RTO/ISO tariffs. In addition, the extensive comments submitted by the RTOs/ISOs do not point to any past or planned generator retirements that may be a threat to grid resilience.”<sup>4</sup> The Commission also initiated a new proceeding, under Docket No. AD18-7-000, to holistically examine the resilience of the bulk power system. In doing so, the Commission recognized that “it must remain vigilant with respect to resilience challenges, because

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<sup>3</sup> See Comments of First Energy Service Co., et al. in support of the Grid Reliability and Resilience Pricing Notice of Proposed Rulemaking, Docket No. RM18-1 (Filed Oct. 23, 2017)

<sup>4</sup> 162 FERC ¶ 61,012 (2018) at P 15 (internal citations omitted).



affordable and reliable electricity is vital to the country's economic and national security.”<sup>5</sup> That proceeding is on-going. NJBPU asks that the Department consider this separate proceeding in its review of the FES Request.

Moreover, NJBPU respectfully urges the Department to give all interested parties sufficient time to present their responses to the FES Request before issuing a determination. Accordingly, the NJBPU supports and joins the numerous requests filed in this proceeding seeking a 60-day comment period.

## V. CONCLUSION

For the reasons set forth above, NJBPU respectfully requests that the Department grant its motion to intervene in this proceeding. Further, NJBPU protests the FES request and asks that the Department immediately reject the FES Request, or, in the alternative, provide all interested parties with 60 days to file comments.

Respectfully submitted,

**NEW JERSEY BOARD OF PUBLIC  
UTILITIES**

By: /s/Cynthia L. M. Holland  
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**GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY**

By: /s/Timothy R. Oberleiton  
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**DATED:** April 5, 2018

---

<sup>5</sup> <https://www.ferc.gov/media/news-releases/2018/2018-1/01-08-18.asp#.WsT66C7waUk>

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 5<sup>th</sup> day April, 2018, served via overnight mail or electronic transmission, the foregoing upon each person designated on the official service list<sup>6</sup> compiled by the Secretary in this proceeding.

/s/ Timothy R. Oberleiton

Timothy R. Oberleiton

Deputy Attorney General

New Jersey Office of the Attorney General

Department of Law & Public Safety

Division of Law

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**DATED:** April 5, 2018

---

<sup>6</sup> While our office is not aware of an “official” DOE service list in this matter, we have created a list comprising the interested parties known at this time.



Document 27

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April 5, 2018

**Via Electronic Mail**

The Honorable James Richard Perry  
Secretary of Energy  
U.S. Department of Energy  
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Assistant Secretary, DOE Office of Elec. Delivery & Energy Reliability  
Office of Electric Reliability and Energy Reliability  
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**RE: Protest of the PJM Consumer Representatives**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

The PJM Industrial Customer Coalition ("PJMICC"), on behalf of the PJM Consumer Representatives, hereby submits the attached Protest to FirstEnergy Solutions Corp.'s ("FES") March 29, 2018 Request For Emergency Action Under Section 202(c) of the Federal Power Act.

**www.McNeesLaw.com**

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • FREDERICK, MD • WASHINGTON, DC

The Honorable James Richard Perry, et al.  
April 5, 2018  
Page 2

Respectfully submitted,

McNEES WALLACE & NURICK LLC

A handwritten signature in black ink, appearing to read "Robert A. Weishaar, Jr.", written over a horizontal line.

By

Robert A. Weishaar, Jr.

Counsel to the PJM Industrial Customer Coalition  
and on behalf of the PJM Consumer  
Representatives

RAW/db

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

Request for Emergency Order Pursuant  
To Federal Power Act Section 202(c) By  
FirstEnergy Solutions Corp.

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DOE Docket No. \_\_\_\_\_

**PROTEST OF THE  
PJM CONSUMER REPRESENTATIVES  
TO THE EMERGENCY ORDER REQUEST  
OF FIRSTENERGY SOLUTIONS CORP.**

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Counsel to the PJM Industrial Customer Coalition  
and on behalf of the PJM Consumer  
Representatives

Dated April 5, 2018

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**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

Request for Emergency Order Pursuant  
To Federal Power Act Section 202(c) By  
FirstEnergy Solutions Corp.

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DOE Docket No. \_\_\_\_\_

**PROTEST OF THE  
PJM CONSUMER REPRESENTATIVES  
TO THE EMERGENCY ORDER REQUEST  
OF FIRSTENERGY SOLUTIONS CORP.**

On March 29, 2018, FirstEnergy Solutions Corp. (“FES”) submitted a Request for Emergency Order Pursuant to Federal Power Act Section 202(c)<sup>1</sup> (“Request” or “Emergency Order Request”) to the Secretary of the Department of Energy (“DOE” or “Department”). Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, the PJM Consumer Representatives hereby protest the FES’s Request.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824a(c).

<sup>2</sup> Federal Power Act Section 202(c) and the Department indicate that the Federal Power Act and the Commission’s Rules of Practice and Procedure should be used for procedural guidance in Emergency Order proceedings. Guidance published on the Department’s website points to the Commission’s Rules where DOE regulations at 10 C.F.R. § 205.370, et. seq., are silent. *See, e.g.*, DOE Answer to Procedural Questions Concerning Rehearing of DOE Order, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 30, 2005) at 2. Additionally, the Department has taken the position that the procedure for judicial review of emergency orders under Section 202(c) of the Federal Power Act must be secured through Section 313 of that Act, 16 U.S.C. § 8251. *See, e.g.*, Order No. 202-05-3, *District of Columbia Public Service Commission*, Docket No. E0-05-01 (December 20, 2005) at 11-12. The plain language of Section 202(c)(5) of the Federal Power Act, enacted in 2016, reinforces this principle. Where, as here, a proceeding exists under Chapter 12 of the Federal Power Act, the Commission’s Rules of Practice and Procedure apply. *See* 16 U.S. Code § 825g(b) (Federal Power Act § 308) (“All hearings, investigations, and proceedings under this chapter shall be governed by rules of practice and procedure to be adopted by the Commission.”).

For purposes of this Protest, the PJM Consumer Representatives are comprised of the following:

PJM Industrial Customer Coalition

State of Delaware Division of the Consumer Advocate

Industrial Energy Consumers of America

West Virginia Consumer Advocate

New Jersey Division of Rate Counsel

West Virginia Energy Users Group

Pennsylvania Office of Consumer Advocate

Chemistry Council of New Jersey

Public Power Association of New Jersey

Delaware Public Service Commission

District of Columbia Office of People's Counsel

American Municipal Power, Inc.

Old Dominion Electric Cooperative

American Forest & Paper Association

Southern Maryland Electric Cooperative, Inc.

Maryland Office of People's Counsel

Illinois Industrial Energy Consumers

The Association of Business Advocating Tariff Equity

American Foundry Society

Indiana Office of Utility Consumer Counsel

Indiana Industrial Energy Consumers, Inc.

Ohio Chemistry Technology Council

American Chemistry Council

Industrial Energy Users – Ohio

Illinois Citizens Utility Board

Industrial Minerals Association – North America

National Industrial Sand Association

Pennsylvania Energy Consumer Alliance

## **I. PROTEST**

FES requests the Secretary of the DOE (“the Secretary”) to use the vehicle of an emergency order to require consumers in the PJM Region to bail out certain types of generation assets that have become uneconomic. The Request is framed in alarming and urgent language, but many of the premises underlying the Request are vastly overstated or demonstrably false. FES fails to acknowledge existing procedures to safeguard essential assets and protect reliability without imposing unjust, unreasonable, and unduly discriminatory costs on consumers in the PJM Region; fails to acknowledge substantial evidence of PJM’s successful reliability measures and actions over the past few years; and fails to demonstrate that a true Section 202(c) emergency exists. The Request fails to demonstrate why nuclear and coal generation facilities should receive a bail-out, likely forcing consumers to absorb significant additional and unnecessary costs.

The Request fails as a matter of fact and law for the following reasons:

- Section 202(c) of the Federal Power Act is very limited in scope, and FES’s attempt to apply Section 202(c) beyond its intended scope is unlawful.
- FES’s Emergency Order Request is unprecedented and overbroad.
- FES has not demonstrated that an emergency exists.
- If reliability concerns were to arise, PJM has in place adequate processes for addressing those concerns.

- If granted, the Request would unnecessarily raise energy prices for consumers and directly undercut the tremendous economic advantage to the United States from natural gas shale plays.
  - FES's argument that energy price formation in PJM does not adequately compensate baseload resources is invalid and inappropriate in an emergency order request; FES's argument on price formation is more appropriately presented and examined in the ongoing PJM stakeholder process.
  - FES seeks to undermine the recent Commission order rejecting the grid resiliency pricing proposal and the ongoing FERC grid resiliency proceeding (Dockets AD18-7 and RM18-1) and other stakeholder processes.
  - FES's clearing of the Base Residual Auction ("BRA") through 2020-2021 demonstrates that FES currently has an obligation, and associated compensation for that obligation, to run its units through May 31, 2021.
- A. Section 202(c) of the Federal Power Act is Very Limited in Scope, and FES's Attempt to Apply Section 202(c) Beyond Its Intended Scope is Unlawful.**
- 1. Section 202(c) confines emergencies to specific, imminent events, and any solutions must be specific and temporary.**

Section 202(c) of the Federal Power Act confers certain emergency powers upon the Secretary.<sup>3</sup> Importantly, Section 202(c) confines emergencies to specific, imminent events. Section 202(c) of the Federal Power Act grants the Department authority over "the generation of electric energy" in the following circumstances: (1) during wartime; or (2) if "the [Department] determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes."<sup>4</sup>

The text of the statute provides inherent limitations on the emergency powers and confines Emergency Orders to specific, imminent events. First, the term "exists" indicates a present tense concern—not a distant possibility several years in the future. Second, the term "emergency" is

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<sup>3</sup> See 16 U.S.C. § 824a(c).

<sup>4</sup> 16 U.S.C. § 824a(c).

defined by Merriam-Webster's Dictionary as "an unforeseen combination of circumstances or the resulting state that calls for immediate action."<sup>5</sup> Elsewhere, the same dictionary references an emergency as applying "to a sudden unforeseen situation requiring prompt action to avoid disaster."<sup>6</sup> This indicates a situation that is imminent and unavoidable. Third, the statute's reference to "wartime powers" indicates the type of factual context Congress intended for the Emergency Order power to be used. The D.C. Circuit has affirmed this view, stating that Section 202(c) "speaks of 'temporary' emergencies, epitomized by wartime disturbances"<sup>7</sup> and that the statute is reasonably understood to exclude circumstances such as "dependence on imported oil." Finally, the use of the words "sudden" and "shortage" reinforce the statutory context of an immediate need.<sup>8</sup>

Moreover, Emergency Orders are intended to provide for only temporary solutions. The text of Section 202(c) indicates an Emergency Order may "require . . . such *temporary connections of facilities* and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest." Gradual industry changes affecting certain types of generation resources do not constitute a sudden emergency requiring immediate action.

The development of the Federal Power Act also confirms that the authority for Emergency Orders under Section 202(c) is limited to unusual, unexpected circumstances. In 2005, Congress added Section 215 of the Federal Power Act, establishing an Electric Reliability Organization and

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<sup>5</sup> Definition of "emergency," Merriam-Webster's Dictionary 407 (11<sup>th</sup> ed. 2004).

<sup>6</sup> Definition of "juncture," Merriam-Webster's Dictionary 678 (11<sup>th</sup> ed. 2004). The definition of "juncture" further includes this additional definition of "emergency."

<sup>7</sup> See *Richmond Power and Light v. Federal Energy Reg. Comm.*, 574 F.2d 610, 615 (D.C. Cir. 1978).

<sup>8</sup> See *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) (statutory terms should be interpreted in context of nearby parallel terms "in order to avoid the giving of unintended breadth to the Acts of Congress").

specifying procedures, remedies, and timeframes for federal reliability standards.<sup>9</sup> As aptly noted in Sierra Club's response to FES's Emergency Order Request, prior to the Energy Policy Act of 2005, "the reliability of the nation's bulk-power system depended on participants' *voluntary* compliance with industry standards."<sup>10</sup> Consequently, Federal Power Act provisions that predated the Energy Policy Act, including Section 202(c), were not intended to provide the federal government with authority to enforce broad, long-term reliability requirements. That authority commenced with the Energy Policy Act of 2005, and that authority rests with the Commission, not the Department. Finally, broad ratemaking authority rests with the Commission—not the Department—and is addressed in other provisions within the Federal Power Act. As discussed in further detail below, FES's Request unlawfully exceeds the scope of the Department's authority under Section 202(c) in each of these respects.

**2. FES's Request seeks an Emergency Order that would be illegal and that would violate Section 202(c).**

FES's Request is unlawful because it: (1) does not present substantial evidence of an imminent threat to reliability and, even if it did, (2) the requested relief far exceeds the intended breadth of relief and the Department's authority under 202(c). In Section B of this Protest, the PJM Consumer Representatives demonstrate that the scope of FES's requested Emergency Order is unprecedented, overbroad, and impermissibly seeks to override existing statutory and regulatory authority as well as FERC and DOE precedent. In Section C of this Protest, the PJM Consumer Representatives explain that FES failed to substantively demonstrate an emergency exists in PJM.

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<sup>9</sup> See generally 16 U.S.C. § 825o.

<sup>10</sup> Sierra Club Comments at 6 (quoting *Alcoa, Inc. v. FERC*, 564 F.3d 1342, 1344 (D.C. Cir. 2009) (emphasis added) (filed with DOE on Mar. 30, 2018)).

While Section 202(c) confers certain emergency powers upon the Secretary,<sup>11</sup> FES ignores the text of Section 202(c)'s limitations on the use of emergency power as emergencies are specific, imminent events. FES has failed to even state a case that the potential retirement of certain generation assets, several years from now, meets the definition of an emergency. FES passionately advocates for Secretarial intervention without demonstrating that there is an imminent need for intervention for any specific generation unit.

The text of Section 202(c) describes the core power of an Emergency Order to order “*generation, delivery, interchange or transmission of electric energy.*”<sup>12</sup> FES's Request asks for nothing of the sort. The Request fails to identify any generation or other resource that the Secretary should order to be activated or connected.<sup>13</sup> Instead, the Request is purely financial in nature, asking the Secretary to override existing contracts for assets that are *already* generating electricity. In other words, this Request is about a self-perceived crisis of compensation, not a generation emergency.

FES's urgent and descriptive language cannot conceal the fact that, *even if FES's factual claims were to be believed*, FES's claimed “emergency” is several years away. In the Request, FES did not show that any alternative courses of action were unavailable to address its self-perceived crisis, and it did not demonstrate why the emergency request, *at this time*, is prudent and necessary. FES cites to no current shortfall in power supply. Giving any credence whatsoever to FES's Emergency Order Request would pave the way for other entities to assert an emergency

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<sup>11</sup> See 16 U.S.C. § 824a(c).

<sup>12</sup> 16 U.S.C. § 824a(c)(1), (2) (emphasis added).

<sup>13</sup> 10 C.F.R. § 205.373(h) requires an Emergency Order Request to include “[a] description of efforts made to obtain additional power through voluntary means and the results of such efforts.” FES stated this was PJM's responsibility. Request at 29. However, FES could not provide this information because its Request does not ask the Secretary to order additional generation. The Request is simply seeking additional *compensation* for its current generation assets.

whenever their self-perceived crises are only economic and result from the inevitable changing mix of generation resources. Declaring an emergency now, as FES requests, runs directly contrary to the following provision of 10 C.F.R. § 205.371: “Situations where a shortage of electric energy is projected due solely to the failure of parties to agree to terms, conditions, or other economic factors relating to service, generally will not be considered emergencies *unless the inability to supply electric service is imminent.*”<sup>14</sup> FES’s Request fails to state any imminent or specific threat that meets the definition of “emergency” under the statute or its associated regulations.<sup>15</sup>

The Department’s regulations define “emergency” in 10 C.F.R. § 205.371 as “an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power.” Section 371 lists six causes of an emergency: (1) weather conditions, (2) acts of God, (3) unforeseen circumstances not preventable by the “entity,” (4) sudden increase in customer demand, (5) inability to obtain adequate amounts of the fuels necessary to generate electricity, or (6) regulatory action prohibiting certain power supply facilities. FES’s Request matches none of these causes. More importantly, FES has shown no “unexpected inadequate supply of electric energy,” as required by the Department’s regulations.<sup>16</sup>

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<sup>14</sup> Emphasis added.

<sup>15</sup> As stated in the Sierra Club’s Comments at 6:

Reading section 202(c) to permit direct enforcement of reliability requirements through emergency orders would bypass the limits and procedures that Congress enacted in section 215 to constrain such enforcement. See *California Independent System Operator Corp. v. FERC*, 372 F.3d 395, 401-2 (D.C. Cir. 2004) (“Congress’s specific and limited enumeration of [agency] power over [particular matter] in [one section of Federal Power Act] is strong evidence that [separate section] confers no such authority on [agency].”).

<sup>16</sup> See 10 C.F.R. § 205.371.



A Section 202(c) Emergency Order may only be issued to address “a specific inadequate power supply situation.”<sup>17</sup> FES can point to no such specific situation and only provides general arguments about what could happen years down the road. In *Richmond Power*, the Commission declined, as improper under Section 202(c), a request to use emergency authority to address “broad questions of resource allocation,” and the D.C. Circuit affirmed.<sup>18</sup> To attempt to enact broad-based sweeping changes through emergency authority is not only ill-advised, but illegal. The Secretary should reject FES’s Request for the same reasons the Commission declined to act under Section 202(c) in the case that led to the *Richmond Power* opinion by the D.C. Circuit.

**B. The Scope of the Requested Emergency Order is Unprecedented, Overbroad, and Impermissibly Seeks to Override Existing Statutory and Regulatory Authority and FERC and DOE Precedent.**

**1. The scope of the Request is inconsistent with the Department’s prior issuances of Emergency Orders.**

In the Request, FES seeks an Emergency Order directing “certain existing nuclear and coal-fired generators in PJM...to enter into contracts and all necessary arrangements with PJM, on a plant-by-plant basis...”<sup>19</sup> As to those “certain existing nuclear and coal-fired generators in PJM,” FES attaches to the Request a list (Attachment A) with nuclear and coal-fired generating units in PJM, many of which are not owned by FES. Aside from requesting overbroad relief that lacks specificity and is not tied to discrete issues at specific units it owns, FES violates the legal principle of standing by seeking relief for facilities it does not own.<sup>20</sup>

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<sup>17</sup> 10 C.F.R. § 205.371.

<sup>18</sup> *Richmond Power and Light v. Federal Energy Reg. Comm.*, 574 F.2d 610, 615-16 (D.C. Cir. 1978) (rejecting a claim that the 1973 oil embargo warranted an order, the court said that Section 202(c) is “aimed at situations in which demand for electricity exceeds supply and not at those in which supply is adequate but a means of fueling its production is in disfavor”).

<sup>19</sup> Request at 1.

<sup>20</sup> In response to FES’s Request, PJM has noted that FES’s Request curiously seeks relief for FES’s entire merchant fleet as well as relief for all other coal and nuclear units in PJM, totaling over 80 generation units. PJM Letter to

Past Emergency Orders issued by the Department have been narrow in scope, with most directed toward one facility, and all focused on the provision of power to a specific geographical area.<sup>21</sup> For example, Emergency Orders issued in 2002 and 2003 were specifically directed toward the Cross-Sound Cable connecting Connecticut to Long Island.<sup>22</sup> An Emergency Order issued in 2005—in response to “massive destruction” by Hurricane Rita—authorized CenterPoint Energy to temporarily connect electricity lines to restore power to Entergy Gulf States, Inc.

The few orders that reached beyond one or two facilities were still narrowly tailored. For example, arguably the broadest use of emergency order authority by the Department was in response to the massive and unprecedented California energy crisis in 2000-2001.<sup>23</sup> Secretaries Richardson and Abraham issued a short series of Emergency Orders on approximately a weekly basis, requiring specific facilities to “generate, deliver, interchange, and transmit electricity” when requested by the California ISO. These Orders generally expired within approximately two weeks, and the entire series of Orders spanned less than two months.

As to the PJM territory, the Department has issued emergency orders for only two facilities: a 2005 Emergency Order (and follow-up orders) related to Mirant Corporation’s Potomac River

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Secretary Perry re FES’s Request for Emergency Relief under Section 202 of the Federal Power Act at fn. 1 (Mar. 30, 2018).

<sup>21</sup> See *DOE’s Use of Federal Power Act Emergency Authority*, Department of Energy, available at <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/other-regulatory-efforts/does-use> (last visited Apr. 3, 2018). Assistant DOE Secretary has stated that DOE “would never use” emergency orders for uneconomic plants. See article by Gavin Bede, *Utility Dive* (Feb. 20, 2018). Available at <https://www.utilitydive.com/news/doe-would-never-use-emergency-order-for-uneconomic-plants-walker-says-1/517455/> (last accessed Apr. 5, 2018).

<sup>22</sup> In August 2002, responding to concerns about the availability of electricity on Long Island, an Emergency Order was issued directing Cross-Sound Cable Company to operate the Cross-Sound Cable from Connecticut to Long Island and related facilities. In August 2003, DOE required Cross-Sound Cable Company to operate its facilities in response to the blackout under the direction of the New York Independent System Operator and ISO New England.

<sup>23</sup> See *California December 2000*, Department of Energy, available at <https://www.energy.gov/oe/downloads/federal-power-act-section-202c-california-december-2000> (last accessed Apr. 5, 2018).

Generating Station and a 2017 Emergency Order (and follow-up orders) related to Dominion Energy Virginia's Yorktown Units 1 and 2.<sup>24</sup> In contrast to the FES Request, both of these Emergency Orders were (1) targeted to a specific city or geographical area, (2) designed to be temporary until new transmission could be put in service, and (3) issued to maintain specific generation units where closing of the units was recent or imminent.

In 2005, Mirant Corporation ceased generation at its coal-fired Potomac River station due to air quality concerns raised by the Virginia Department of Environmental Quality.<sup>25</sup> The day of the closure, the District of Columbia Public Service Commission ("DCPSC") requested that the Department find that a Section 202(c) emergency existed. DCPSC's petition to the Secretary stated that the plant's shutdown would "have a drastic and potentially immediate effect on the electric reliability in the greater Washington, D.C. area."<sup>26</sup>

The Department reviewed DCPSC's petition and considered comments, issuing Emergency Order 202-05-3 approximately four months after receiving the petition.<sup>27</sup> The Department recognized the Potomac River plant was one of only three sources of electricity serving the Washington, D.C. central business district. The Department concluded that to maintain a "minimally reliable electric power system, the plant must be available to run" when one of the other two sources of power (two 230 kV transmission lines) was out of service. The Department found an emergency existed based on a combination of factors, including "the reasonable

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<sup>24</sup> *DOE's Use of Federal Power Act Emergency Authority*, Department of Energy, available at <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/other-regulatory-efforts/does-use> (last visited April 4, 2018).

<sup>25</sup> Emergency Petition and Complaint of the District of Columbia Public Service Commission, DOE Docket No. EO-05-01, FERC Docket No. EL05-145-000 (Aug. 24, 2005) at 1, available at [https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/mirant\\_082405.pdf](https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/mirant_082405.pdf).

<sup>26</sup> *Id.* at 1-2.

<sup>27</sup> DOE Order No. 202-05-3 (Dec. 20, 2005), available at [https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/mirant\\_122005\\_2.pdf](https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/mirant_122005_2.pdf).

possibility an outage will occur that would cause a blackout, the number and importance of facilities and operations in our Nation's Capital . . . the extended number of hours of any blackout . . . and the fact that the current situation violates applicable reliability standards.” The original Order 202-05-3 expired in October 2006 but was renewed periodically until the final Order was issued in January 2007, expiring that summer.<sup>28</sup>

Unlike FES's present Request, the Emergency Order for the Potomac River plant was targeted and focused. The concerns were immediate because the Nation's capital would have had only two sources of power. Further, it was a temporary measure until additional sources of power became available to Washington, D.C.

In June 2017, with Dominion Energy Virginia's support, PJM requested an Emergency Order from the Department requiring Dominion Energy Virginia to operate its coal-fired Yorktown Units 1 and 2 at the Yorktown Power Station, which had been slated for closure due to violations of environmental standards.<sup>29</sup> PJM asked that the Order require the units to operate “only as needed in order to address NERC reliability issues and other local transmission issues.”<sup>30</sup> The purpose of the request was “to preserve the reliability of [the] bulk power transmission system in the North Hampton Roads [Virginia] area.”<sup>31</sup> PJM articulated an immediate need for an order to prevent uncontrolled power disruptions and shedding of critical loads during the peak summer

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<sup>28</sup> See DOE Order No. 207-07-2, Docket No. EO-05-01 (Jan. 31, 2007), available at <https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/EO-05-01.pdf>; DOE Order No. 202-07-3, Docket No. EO-05-01 (Jul. 2, 2007) (indicating Order No. 207-07-2 expired on July 1, 2007), available at [https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/DOE\\_Order\\_202-07-3.pdf](https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/DOE_Order_202-07-3.pdf).

<sup>29</sup> Dominion Energy Virginia had notified PJM of its intention to deactivate the Yorktown units as of the end of 2014, prompted by the Environmental Protection Agency's Mercury and Air Toxics Standards requirements. See PJM Request for Emergency Order Pursuant to Section 202(c) of the Federal Power Act (Jun. 13, 2017) at 5, available at [https://www.energy.gov/sites/prod/files/2017/07/f35/PUBLIC-DOE%20FPA%20202%28c%29%20Emergency%20Application%20Dominion%20Yorktown%201%20%202%20-6-13...\\_0.pdf](https://www.energy.gov/sites/prod/files/2017/07/f35/PUBLIC-DOE%20FPA%20202%28c%29%20Emergency%20Application%20Dominion%20Yorktown%201%20%202%20-6-13..._0.pdf).

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.* at 1.

months which were quickly approaching. PJM had ordered expanded transmission capacity to the North Hampton Roads area, but Yorktown Units 1 and 2 were needed in the interim; PJM also suggested the transmission expansion would require outages, which could, in turn, require the Yorktown Units 1 and 2 to operate. The Department issued Emergency Order 202-17-2 on June 16, 2017. Orders have been reissued approximately every 90 days to maintain Yorktown Units 1 and 2.<sup>32</sup>

Unlike the FES Request, the Yorktown Emergency Order was narrowly tailored to a specific and imminent reliability need. PJM stated that its request was “in no way . . . intended as a substitute for the need for transmission infrastructure on the Virginia Peninsula,” but needed only until adequate transmission infrastructure could be placed into service and only for the two Yorktown units.<sup>33</sup>

In short, the Department has never exercised Section 202(c) authority in response to a perceived crisis that was several years away and has never exercised Section 202(c) authority anywhere close to the degree requested by FES. Instead, the Department has carefully used Section 202(c) authority to address present-time shortfalls in electricity supply through narrowly tailored solutions. Because FES fails to tailor and limit its request to specific shortfalls in electric supply at specific geographical locations, the Request should be rejected.

**2. The Request seeks to vest the Department with ratemaking authority that properly resides with the Federal Energy Regulatory Commission.**

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<sup>32</sup> *Id.* at 6.

<sup>33</sup> Summary of PJM Interconnection LLC’s Request For Emergency Order Pursuant to Federal Power Act Section 202(c) (Jun. 13, 2017), available at <https://www.energy.gov/sites/prod/files/2017/07/f35/DOE%20Dominin%20Yorktown%20FPA%20Section%20202%20Petition%20Summary%20Final%206-13-17%20.pdf>.

Title IV of the DOE Act provides for the creation of the Commission as an “independent regulatory commission.”<sup>34</sup> Under Section 402 of the DOE Act, the Commission is vested with the authority to enforce Part II of the Federal Power Act. The Commission’s jurisdiction is exclusive.<sup>35</sup> Section 401(f) provides that the Commission is authorized to establish such procedural and administrative rules as are necessary to exercise its functions. Additionally, Section 403(c) provides that “[a]ny function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act...may be conducted by rulemaking procedures.”<sup>36</sup>

Although the Secretary has the authority to issue an Emergency Order where an urgent need necessitates it, that authority does *not* include dictating rates, as FES asks the Secretary to do here. The DOE Act explicitly states, “[t]he decision of the Commission involving any function within its jurisdiction...*shall not* be subject to further review by the Secretary.”<sup>37</sup> Despite this provision, FES asks the Secretary, if affected parties cannot negotiate new contractual terms in 15 days, to “step in and *determine* the just and reasonable compensation and conditions.”<sup>38</sup>

This request contravenes the Department’s own regulations. 10 C.F.R. § 205.376 states that if parties affected by an Emergency Order are unable to reach an agreement as to rates, the Department “shall refer the rate issues to the Federal Energy Regulatory Commission.” Consequently, this Request asks DOE to impermissibly override its own regulations (which have the force of law and are subject to notice-and-comment rulemaking procedures). Because FES

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<sup>34</sup> 42 U.S.C. § 7171(a). As an independent regulatory commission, “the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department [of Energy].” 42 U.S.C. § 7171(d).

<sup>35</sup> 42 U.S.C. § 7172(g).

<sup>36</sup> 42 U.S.C. § 7173(c).

<sup>37</sup> 42 U.S.C. § 7172(g) (emphasis added).

<sup>38</sup> Request at 32 (emphasis added).

*requests no new connections to provide electric service, it effectively is asking for an Emergency Order on rates alone.* However, the Department explicitly cannot grant FES's request that it directly set "just and reasonable rates." That jurisdiction lies with FERC, not the Department. Further, FERC has already exercised its authority to set "just and reasonable rates" and has rejected proposals similar to FES's Request. In Docket No. RM18-1-000, the Commission held that establishing cost-of-service rates for "all eligible resources . . . regardless of need or cost to the system" had not been demonstrated to be just and reasonable.<sup>39</sup> If FES believes FERC errs in its determination of just and reasonable rates in any particular rate proceeding, it may appeal to the D.C. Circuit—not the Secretary of Energy.

**3. The Request seeks relief that does not constitute "just and reasonable" compensation under the Federal Power Act.**

The wholesale compensation mechanisms of the Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") that would be affected by the Request are established through FERC-approved tariffs that the Commission must find are just and reasonable.<sup>40</sup> To alter those tariffs, the Commission—not the Department—must find that the current tariffs are not just and reasonable before it may determine a just and reasonable replacement rate.<sup>41</sup> Under Section 206 of the Federal Power Act ("FPA"), the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential is on the proponent of the new rate.<sup>42</sup> It is not enough to claim that the rates are unreasonable because unit owners may be required to close

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<sup>39</sup> Grid Resilience in Regional Transmission Organizations and Independent System Operators, 162 FERC ¶ 61,012 at P 16 (Jan. 8, 2018).

<sup>40</sup> 16 U.S.C. § 824d.

<sup>41</sup> 16 U.S.C. § 824e.

<sup>42</sup> 16 U.S.C. § 824e(b); *FirstEnergy Serv. Corp. v. FERC*, 758 F.3d 346, 354 (D.C. Cir. 2014).

uneconomic generation units. Providing economic signals to unit owners is the very point of market-based compensation and the just and reasonable market rules that are in place to determine market-based compensation.<sup>43</sup> Accordingly, the potential closing of generation units does not demonstrate that rates that have been found to be just and reasonable have suddenly become unjust and unreasonable.

FES's Request complains that the market-based rates in PJM do not generate sufficient revenue (while failing to mention both the billions of dollars utilities received for stranded costs during state restructuring processes and the high prices and high profits these same units commanded in the mid-2000s). For example, customers in Pennsylvania,<sup>44</sup> New Jersey,<sup>45</sup> and Ohio<sup>46</sup> paid billions in stranded costs. FES proposes new "just and reasonable" rates but has never

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<sup>43</sup> See Murray Energy Comments at 19, FERC Docket RM18-1-000 ("While other issues—including increasing environmental burdens for coal and rising operating costs for nuclear—were contributing factors, the core issue boils down to economics. If wholesale prices were higher, for example, it would be profitable for a coal plant to install new emission scrubbers and the magnitude of coal and nuclear retirements would be significantly lower.").

<sup>44</sup> In Pennsylvania, customers paid the Pennsylvania jurisdictional utilities approximately \$12.3 billion in stranded costs. Stranded cost determinations were not changed in Pennsylvania when energy market prices were, in actuality, much higher than projected in the stranded cost proceedings. As such, generation owners, many of which were affiliates of the jurisdictional utilities, realized the upside benefit of higher LMPs while customers continued to make stranded cost payments. See *Application of Metropolitan Edison Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*; *Application of Pennsylvania Electric Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket Nos. R-00974008, et al., and R-00974009, et al., Final Opinion and Order (Oct. 20, 1998); *Pennsylvania Public Utility Commission v. Pennsylvania Power Company (Application for Approval of A Restructuring Plan Under Section 2806 of the Public Utility Code)*, Docket No. R-00974149, Final Order (May 3, 1999) (adopting Tentative Order entered Apr. 1, 1999); *Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.*, Docket Nos. R-00973953 and P-00971265, Final Order (May 14, 1998); *Re West Penn Power Company*, 91 Pa. PUC 700 (Order entered Nov. 19, 1998).

<sup>45</sup> In New Jersey, customers paid approximately \$2.94 billion for net-of-tax stranded costs. *In re Public Service Elec. and Gas Company's Rate Unbundling, Stranded Costs and Restructuring Filings*, 330 N.J. Super. 65, 116 (App. Div. 2000), *affirmed* 167 N.J. 377, 771 A.2d 1163 (2001); see also *Murphy v. Public Serv. Elec. & Gas Co.*, 2009 N.J. Super. Unpub. LEXIS 309 (App. Div. 2009).

<sup>46</sup> Like other states, Ohio provided for stranded cost recovery and authorized approximately \$8.4 billion in electric transition plans. See Docket Nos. 99-1729-EL-ETP, Opinion and Order at 11 (9/28/00), <http://dis.puc.state.oh.us/ViewImage.aspx?CMID=WQWKCC2QHW8Q0Q92>; 99-1658-EL-ETP, Opinion and Order at 23 (8/31/00), available at: [http://dis.puc.state.oh.us/ViewImage.aspx?CMID=ROHRO\\$ZFW2EZ9YSU](http://dis.puc.state.oh.us/ViewImage.aspx?CMID=ROHRO$ZFW2EZ9YSU); 99-1687-EL-ETP, Testimony of Ralph Luciani at Exhibit RLL-6 (12/20/99), available at: [http://dis.puc.state.oh.us/ViewImage.aspx?CMID=LL8IYWPXY9KXIB\\$@](http://dis.puc.state.oh.us/ViewImage.aspx?CMID=LL8IYWPXY9KXIB$@); PUCO Case No. 99-1212-EL-ETP, Opinion and Order at 31 (7/19/00), available at: [http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SK29QJKYOPIS\\$BUO\\$](http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SK29QJKYOPIS$BUO$); Supplemental Testimony of Waggoner at HLW-1S, 2S, 3S (4/4/00), available at:



demonstrated that the existing rates—*rates approved by the Commission*—are unjust and unreasonable. In effect, FES equates the poor economics of its units with unreasonable rates.<sup>47</sup> A guarantee of positive annual revenue in a competitive market, however, is not required by the United States Constitution or the Federal Power Act.<sup>48</sup>

**4. The Request ignores decades of precedent by seeking cost-based rates that seek to reverse the owner's write-down of the asset value.**

Throughout the Request, FES asks the Department to order PJM to enter cost-based contracts with many generation assets, overturning FERC decisions granting market-based rate authority to generation assets such as those of FES. In essence, FES is proposing to “have its cake and eat it too.” FES is requesting that PJM customers be forced to pay cost-based rates for power from nuclear and coal facilities through “full recovery of [the generator’s] fully allocated costs and a fair return on equity.”<sup>49</sup>

In making this request, FES is prodding the Secretary to take dramatic steps in contravention of FERC policy set forth in Order No. 697, overriding FERC’s authority and

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<http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SLQYV6XHZZIUF95R>. FirstEnergy’s stranded cost total authorized in its electric transition plan was approximately \$6.41 billion (\$5.25 billion for out-of-market generation and \$1.16 billion for regulatory assets). PUCO Case No. 99-1212-EL-ETP, Opinion and Order at 31 (7/19/00), available at: [http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SK29QJKYOPISBUO\\$](http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SK29QJKYOPISBUO$); Supplemental Testimony of Waggoner at HLW-1S, 2S, 3S (4/4/00), available at: <http://dis.puc.state.oh.us/ViewImage.aspx?CMID=SLQYV6XHZZIUF95R>.

<sup>47</sup> See, e.g., Exelon Comments at 9, FERC Docket No. RM18-1-000. There is also a substantial inconsistency in the claims the parties are making as to the failures inherent in the market-based approaches of the RTOs and ISOs. For example, the Nuclear Energy Institute complains about the effect of short term prices while simultaneously pointing out that other social goals are embedded in retail and wholesale pricing. NEI Comments at 3-4, FERC Docket No. RM18-1-000.

<sup>48</sup> *Market Street Railway Co. v. California Railroad Comm'n*, 323 U.S. 548 (1945); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (regulation under the parallel provisions of the Natural Gas Act does not ensure that the business will produce net revenue).

<sup>49</sup> Request at 31. Specifically, FES asks that the Emergency Order apply to unregulated “nuclear and coal-fired generators located within the PJM footprint” that are compliant with environmental laws and possess certain levels of on-site fuel storage. *Id.*

imposing non-market prices on uneconomic assets. FES's assertion that these actions would result in "just and reasonable rates" ignores decades of FERC precedent.

FES's Request does not stop with a request for cost-based compensation; it also asks that recent impairments/write-downs, taken by FES and other asset owners consistent with accounting standards, be ignored in cost-of-service calculations. In Footnote 172 of the Request, FES states that "the traditional cost-of-service model needs to be modified" to be additionally favorable to FES and other generators. FES contends:

Certain nuclear and coal-fired units have, for financial reporting purposes, impaired the generating asset values based on the expectation that market revenues would not be sufficient to provide a return of and on invested capital. The fact that these assets were impaired for financial reporting purposes does not change the amount that was invested in the plant nor does it relieve their owners from their obligations to bondholders. *As a result, the traditional cost-of-service model needs to be modified* to allow cost recovery based on pre-impairment asset values or it needs to be modified to allow a return on equity on the post-impairment asset value with an additional allowance for recovery of maturing debt in addition to interest expense.<sup>50</sup>

Even in situations where nuclear and coal-fired units have taken impairments—writing off the value of the asset—FES requests *full* cost-based recovery, *even on the value of the write-down*. Put simply, FES wants the Department to (1) magically restore, in contravention of FERC precedent, the full value of its assets; and (2) dictate that customers pay for FES shareholders to earn a "fair return on equity" of this full value. FES provides no support for this aspect of its Request.

On the merits, this Request should fail for many of the same reasons FERC rejected the proposed rulemaking in its Grid Reliability and Resilience Pricing rulemaking proceeding at Docket No. RM18-1-000. It is fundamentally unfair to require customers to fund FES and other generators' "double dip"—benefitting from "original" asset value even after impairing the assets.

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<sup>50</sup> Request at 31-32, fn. 172 (emphasis added).

FES has failed to demonstrate that its chosen units are actually needed to serve load and has failed to explain whether its proposed compensation should be net of market revenues. Further, its proposed solution, implemented by an emergency order, would neglect the cost controls imposed by proper cost-based ratemaking.

Energy customers in the PJM Region have already shouldered the costs of paying the asset owners at least once through regulated rates (return of, and on, capital investment), again through stranded cost recovery in several states, and once more when high natural gas prices in the mid-2000s drove energy market prices to higher levels. Now that these same energy customers are beginning to realize some benefit from Locational Marginal Pricing (“LMP”) occasioned by drops in natural gas prices, FES asks for an Order declaring an “emergency” and providing unprecedented and unlawful relief. The hyperbole and language of “crisis” used by FES reflects a desperate attempt by FES to prop up certain failing assets and deliver to its shareholders an investment return to which they are not entitled. The Request seeks relief that is impermissible; the Request should be denied.

**C. FES Has Not Substantively Demonstrated that an Emergency Exists.**

An emergency is “an unexpected inadequate supply of electric energy which may result from the unexpected outage or breakdown of facilities for the generation, transmission or distribution of electric power.”<sup>51</sup> Emergencies are caused by: (1) weather conditions, (2) acts of God, (3) unforeseen, unpreventable circumstances, (4) sudden increase in customer demand, (5) inability to obtain adequate amounts of the fuels necessary to generate electricity, or (6) regulatory action prohibiting certain power supply facilities.<sup>52</sup> FES has failed to demonstrate “a specific

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<sup>51</sup> 10 C.F.R. § 205.371.

<sup>52</sup> 10 C.F.R. § 205.371.

inadequate power supply situation” caused by any of those scenarios.<sup>53</sup> Economic circumstances resulting from a changing generation resource landscape do not constitute a sudden emergency requiring immediate action. In response to FES’s Request, PJM stated: “without reservation there is no immediate threat to system reliability.”<sup>54</sup>

**1. PJM is not facing premature retirements of coal and nuclear generating facilities; rather, units are retiring due to correct economic signals.**

In the Request, FES argues that FERC and PJM are allowing premature retirements of coal and nuclear generating facilities and argue immediate action is necessary to avert a crisis. Despite FES’s claims to the contrary, capacity reserve margins are ample in the PJM Region. Retirement decisions have been based upon fundamental economics, involving many generation facilities that have reached the end of their normal lives. These retirements cannot be accurately characterized as *premature*.<sup>55</sup> Nuclear units that have retired have done so based upon multiple factors, including equipment repairs that became unfeasible. Further, the minimal use of Reliability Must Run (“RMR”) agreements demonstrates that the organized market regions are by no means facing the loss of critical generation facilities.

**a. Ample capacity reserve margins in PJM demonstrate that retirements have not been premature.**

In PJM, the most recent BRA for capacity, for the 2020/2021 Delivery Year, cleared reserves of 23.3 percent—or 6.7 percentage points higher than the targeted minimum required reserve level of 16.6 percent.<sup>56</sup> The fact that 165,109.2 megawatts (“MW”) of unforced capacity

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<sup>53</sup> 10 C.F.R. § 205.371.

<sup>54</sup> PJM Letter to Secretary Perry re FES’s Request for Emergency Relief under Section 202 of the Federal Power Act at 1 (Mar. 30, 2018).

<sup>55</sup> See Request at 12.

<sup>56</sup> See 2020-2021 BRA Results, available at <https://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/2020-2021-base-residual-auction-report.ashx> (last accessed Apr. 5, 2018).

producing reserves of 23.3 percent in PJM cleared in the BRA does not even tell the whole story.<sup>57</sup> The amount of capacity in PJM greatly exceeds the amount of cleared resources, with a total of 189,917.8 MW of capacity offered into the 2020/2021 BRA. Resources that were eligible to participate in the auction exceeded this amount, and totaled 212,995.6 MW.<sup>58</sup> By any measure, PJM does not face a capacity shortfall.

Interconnection queues for new generation facilities are also quite robust. For example, based upon a recent report, there are over 60,000 MW of new generation resources in various stages of PJM's interconnection queue.<sup>59</sup> The fact that most of this new generation is planned as renewable or gas-fired resources simply reflects the current economics of constructing new generation facilities. Clearly, recent attempts to construct new coal-fired and nuclear facilities have not proved to be great success stories.<sup>60</sup> Under these circumstances, and given continued and projected low natural gas prices, it logically follows that interconnection queues are dominated by renewable and gas-fired generation facilities. While not all planned generation facilities in the queue will ultimately be placed in service, many of them will be. This reality is not reflected anywhere in the FES Request.

Clearly, there is no current or imminent shortage of generation resources that warrants any action, much less the type of action contemplated in the Request. The fact that some existing coal-

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> PJM Interconnection, L.L.C., *PJM Interconnection Queue Status & Statistics Update Database Snapshot on 04/24/2017* at 16 (May 4, 2017), available at <http://www.pjm.com/-/media/committees-groups/committees/pc/20170504/20170504-item-12-pjm-queue-status-update.ashx> (last accessed Apr. 4, 2018).

<sup>60</sup> See The Post and Courier, *Two identical nuclear projects, one in Georgia and one in South Carolina. Only one survived* (Oct. 29, 2017), available at [http://www.postandcourier.com/news/two-identical-nuclear-projects-one-in-georgia-and-one-in/article\\_4954353a-b8f6-11e7-be85-f341791366a7.html](http://www.postandcourier.com/news/two-identical-nuclear-projects-one-in-georgia-and-one-in/article_4954353a-b8f6-11e7-be85-f341791366a7.html) (last accessed Apr. 4, 2018). See also Mississippi Public Service Commission, *Mississippi Power Company to Suspend Lignite Coal Gasification at Kemper Co. Power Plant* (June 28, 2017), available at <http://www.psc.state.ms.us/mpsc/press%20releases/2017/Mississippi%20Power%20Company%20to%20Suspend%20Lignite%20Coal%20Gasification%20at%20Kemper%20Co.%20Power%20Plant.pdf>.

fired and nuclear generating facilities have recently retired, or plan in the near future to retire, is simply a function of market economics.<sup>61</sup>

***b. Many coal-fired generation facilities have reached the end of their remaining useful life, triggering retirement.***

Nationwide, the coal units that were retired in 2015 were mainly built between 1950 and 1970, and the average age of those retired units was 54 years. The rest of the coal fleet that continues to operate is relatively younger, with an average age of 38 years.<sup>62</sup> The coal units retired in 2015 also tended to be smaller than the rest of the coal fleet. The net summer capacity of the average retired coal unit was 133 MW, compared with 278 MW for the average coal units still operating.<sup>63</sup> Coal plants in these vintages have a typical design life of between 30 to 40 years.<sup>64</sup> Thus, the coal-fired power plants that have recently retired are beyond their design life,<sup>65</sup> and their smaller size makes them generally less economic to run. This reality is not reflected in the FES Request.

***c. Nuclear plant retirements have been driven by economics, local politics, and equipment failures.***

FES argues that PJM does not value resiliency and therefore does not appropriately compensate resources like nuclear and coal. An examination of recent nuclear plant retirements

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<sup>61</sup> Given the current market disincentives, this process makes intuitive sense. With lower wholesale prices of electricity due to falling natural gas prices and increasing low marginal cost renewables, coal and nuclear plants make less money and become increasingly financially distressed. Eventually, dismal revenue projections and falling profits lead to a management decision to shed unprofitable assets. While other issues—including increasing environmental burdens for coal and rising operating costs for nuclear—were contributing factors, *the core issue boils down to economics*. If wholesale electricity prices were higher, for example, it would be profitable for a coal plant to install new emission scrubbers and the magnitude of coal and nuclear retirements would be lower. Murray Energy Comments at 19 (emphasis added).

<sup>62</sup> See EIA Mar. 8, 2016 *Electric Generator Inventory*.

<sup>63</sup> *Id.*

<sup>64</sup> See American Public Power Association, *Michigan's Lansing BWL to close coal-fired power plant by end of 2025* (Aug. 25, 2017), available at <https://www.publicpower.org/periodical/article/michigans-lansing-bwl-close-coal-fired-power-plant-end-2025> (last accessed Apr. 4, 2018).

<sup>65</sup> See Power, *America's Aging Generation Fleet* (Jan. 28, 2013), available at <http://www.powermag.com/americas-aging-generation-fleet/?printmode=1> (last accessed Apr. 4, 2018).

nationwide supports the conclusion that the retirements have been driven by economics and equipment failures that proved too costly to repair, or resulted from negotiations with state or local officials who were concerned over continued operation of the facilities.<sup>66</sup>

In the PJM territory, Exelon Corporation agreed to cease electric generation operations at the Oyster Creek Generating Station by December 31, 2019. The agreement was part of a negotiated settlement with the State of New Jersey intended to ensure that water withdrawals from Barnegat Bay for cooling purposes and discharges from the plant did not damage the ecological health of the Bay.<sup>67</sup>

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<sup>66</sup> This trend is not isolated to PJM. In January of 2017, Entergy announced that it had reached an agreement with the State of New York to shut down the Indian Point nuclear station by 2021 rather than continuing to fight legal battles over renewal of licenses. See Entergy, *Entergy, NY Officials Agree on Indian Point Closure in 2020-2021* (Jan. 9, 2017), available at <http://www.entergynewsroom.com/latest-news/entergy-ny-officials-agree-indian-point-closure-2020-2021/> (last accessed Apr. 4, 2018). Entergy also cited economic factors as contributing to the decision to shut down the facility. Dominion Energy elected to close the Kewaunee Power Station in Wisconsin in 2013 after failing to find a buyer. See USA Today, *Kewaunee County ready to move on after nuclear plant closing* (July 12, 2017), available at <https://www.usatoday.com/story/news/investigations/2017/07/12/kewaunee-nuclear-plant-closing/103598506/> (last accessed Apr. 4, 2018). Dominion said the decision was based purely upon economics, as the plant lacked economies of scale and falling natural gas prices had lowered wholesale power prices. Owners of the San Onofre nuclear power plant made the decision to close the facility in 2013, after a project to replace steam generators went poorly. See The Orange County Register, *San Onofre nuclear plant to shut permanently, Edison says* (June 8, 2013), available at <http://www.ocregister.com/2013/06/08/san-onofre-nuclear-plant-to-shut-permanently-edison-says/> (last accessed Apr. 4, 2018). Duke Energy announced in 2013 that it would close the Crystal River nuclear facility in Florida after construction workers cracked the wall of the containment building during a project to replace steam generators. See Tampa Bay Times, *Duke Energy announces closing of Crystal River nuclear power plant* (updated Feb. 11, 2014), available at <http://www.tampabay.com/news/business/energy/duke-energy-announces-closing-of-crystal-river-nuclear-power-plant/1273794> (last accessed Apr. 4, 2018). Pacific Gas & Electric Co. announced in June 2016 that it would shut down its Diablo Canyon nuclear reactors when their operating licenses expire in 2024 and 2025. However, the decision to shut down the reactors was the result of a negotiated settlement with environmental organizations. See Los Angeles Times, *PG&E to close Diablo Canyon, California's last nuclear power plant* (June 21, 2016), available at <http://www.latimes.com/business/la-fi-diablo-canyon-nuclear-20160621-snap-story.html> (last accessed Apr. 4, 2018). Vermont Yankee Nuclear Power Station closed in December 2014. Entergy's decision to shut down the facility resulted from negotiations with state officials who objected to continued operation of the facility. See State of Vermont Public Service Department, *Brief History of Vermont Nuclear Power* (2017), available at <http://publicservice.vermont.gov/content/nuclear-decommissioning-citizens-advisory-panel-ndcap/history>. Entergy announced in December 2016 that it planned to close the Palisades nuclear generating facility in Michigan on October 1, 2018. On September 28, 2017, Entergy announced it was reversing its decision and would operate the facility at least until the spring of 2022. See Entergy, *Entergy to Continue Operating Palisades Power Plant Until Spring 2022* (Sept. 28, 2017), available at <http://www.palisadespower.com/entergy-to-continue-operating-palisades-power-plant-until-spring-2022/> (last accessed Apr. 4, 2018).

<sup>67</sup> See State of New Jersey Department of Environmental Protection, *Comprehensive Plan of Action Item #1 Close Oyster Creek Nuclear Power Plant* (last updated June 16, 2016), available at <http://www.nj.gov/dep/barnegatbay/plan-oystercreek.htm>.

These decisions to operate or close existing reactors illustrate that nuclear plant retirements are not being driven by RTO power market rules and, thus, the relief being sought by FES would have no impact on those closures. In some cases, local politics and equipment failures have led to decisions to retire or to continue to operate nuclear generating facilities. In fact, three of these closures (Kewaunee, San Onofre, and Crystal River) are not even located in regions of the country that would be subject to the Emergency Order. Thus, the claim that “PJM has done little to prevent this emergency,” or that RTO market rules are driving *premature* nuclear plant retirements does not withstand scrutiny.<sup>68</sup>

*d. The use of RMR agreements has been infrequent.*

The RMR process provides PJM with the ability to keep essential assets online if, and only to the extent that, a reliability problem exists. PJM does use this process on occasion when needed. However, PJM has used the process infrequently, further confirming that generation needed for reliability or “resilience” is not retiring and certainly not retiring prematurely.<sup>69</sup>

The nation is not facing *premature* retirements of coal and nuclear generating facilities; rather, these generating units are retiring due to correct economic signals or for reasons completely unrelated to PJM market rules. Not only is there no emergency, but PJM’s process is working by facilitating the exit of uneconomic and inefficient old generation and facilitating the entry of economic and efficient new generation. It would be inappropriate for the Secretary to issue an Emergency Order that would fundamentally disrupt the entry and exit signals that are currently being provided by the PJM market.

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<sup>68</sup> See Request at 1.

<sup>69</sup> American Manufacturers Comments at 34-39.



**2. The recent Bomb Cyclone weather events and resulting NETL Report do not justify FES's request for DOE to prop up uneconomic coal and nuclear units in PJM.**

In its Request, FES relies heavily on a recently released a DOE-sponsored National Energy Technology Laboratory report (“NETL Report”).<sup>70</sup> The NETL Report states that some coal-fired generating units were a prominent example of “resilience in action” in PJM during the “Bomb Cyclone” winter weather events in late December 2017 to early January 2018.<sup>71</sup> However, the NETL Report’s conclusion about the resiliency of existing coal units in PJM is based on a limited comparison between the increase in coal generation during the Bomb Cyclone and the level of generation from December 1 through 26, 2017 from other resources.<sup>72</sup> Importantly, the NETL Report includes an upfront disclaimer indicating that it only represents “the views and opinions of authors” that “do not necessarily state or reflect the those of the United States Government or any agency thereof.”<sup>73</sup>

Despite FES’s claims, the NETL Report does not show that “immediate action” by DOE is necessary to prop up uneconomic coal and nuclear units.<sup>74</sup> Prior to the Bomb Cyclone, many coal generation units were idle or only partially utilized because they were uneconomic and too costly to operate. The increase in coal generation during the Bomb Cyclone shows only that those coal generators are uncompetitive unless electricity and gas prices increase significantly.<sup>75</sup> Instead of measuring resilience in PJM, the NETL Report “simply finds which energy sources are the most

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<sup>70</sup> See Request at 4-9 (citing National Energy Technology Laboratory, Reliability, Resilience, and the Coming Wave of Retiring Baseload Units Volume I: The Critical Role of Thermal Units During Extreme Weather Events (Mar. 13, 2018) (“NETL Report”), available at <https://www.netl.doe.gov/research/energy-analysis/search-publications/vuedetails?id=2594>).

<sup>71</sup> NETL Report at 12.

<sup>72</sup> See NETL Report at 12.

<sup>73</sup> See NETL Report, Disclaimer page.

<sup>74</sup> See Sierra Club Comments at 12-15 (submitted Mar. 30, 2018 to the DOE in response to FES’s Request).

<sup>75</sup> Sierra Club Comments at 13.

expensive.”<sup>76</sup> Thus, FES’s reliance on the NETL Report’s cursory assessment that many coal units in PJM are expensive fails to support FES’s claim that those units are critically needed to meet demand or ensure resiliency or reliability.

Essentially, the NETL Report provides an assessment of the present supply curve in PJM and highlights that as load increases, RTOs move up the supply stack and increasingly commit higher cost, lower efficiency units.<sup>77</sup> The NETL Report appears to misconstrue typical generation operation of coming on-line when market forces are such that the price being paid for electricity is greater than the cost for the unit to produce electricity as somehow equating that to a herculean effort at providing grid resilience. Such an assessment ignores the fact that in most cases, the generation coming on-line is receiving a capacity market payment collected from consumers to provide standby service and be ready to provide output when demand or prices are high. While it is admirable that units residing in the portion of the supply stack were called on and operated as obligated, it is no less important to recognize that there likely remained higher priced units in the supply stack that were not required to operate during the Bomb Cyclone but none-the-less also received a capacity payment for the standby service that was provided.

Reliance on an assessment of resilience simply based on a cursory review of increased generation output overlooks other data points that qualify the increased output. As PJM noted, combined, 28% of its coal and oil units with on-site fuel inventories reported issues with fuel

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<sup>76</sup> Sierra Club Comments at 13 (citing Michael Goggin, Fossil Lab Misses Mark in Cold Weather “Resilience” Report, (Mar. 28, 2018), available at <http://sustainableferc.org/fossil-lab-misses-mark-in-cold-weather-resilience-report/>.)

<sup>77</sup> See NETL Report at 12-18.

resupply due to fuel transportation constraints from a contribution from coal plants, with coal units most frequently reporting delays due to frozen rivers and increased barge traffic.<sup>78</sup>

Additionally, as it relates to PJM, the NETL Report seems to value the inability of coal plants to cycle during lower priced overnight hours or lower load days of the Bomb Cyclone and equates this inflexibility to increase resilience contribution. NETL correctly identified cycling of natural gas units during the Bomb Cyclone but failed to acknowledge that the flexibility afforded by units that can cycle over holidays, lower load weekend periods, and overnight hours is a desirable characteristic that results in more efficient power market operations.<sup>79</sup> In fact, based on the average daily generation output metric that is used in NETL to purportedly assess plant performance and resilience contribution value, this metric is likely skewed significantly due to desired cycling of the natural gas and oil units, and its value as a meaningful metric is questionable.

As explained in Sierra Club's comments in response to FES's Request, PJM is and has been effectively ensuring system reliability and resilience during a time of shifting energy and generation resources.<sup>80</sup> During the Bomb Cyclone, PJM explained that "the grid and the generation fleet performed well" and that "[e]ven during peak demand, PJM had excess reserves and capacity."<sup>81</sup> The NETL Report does not demonstrate that, after the retirement of certain coal

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<sup>78</sup> PJM Interconnection, PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018 (Feb. 26, 2018) at 16, available at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20180226-january-2018-cold-weather-event-report.ashx>.

<sup>79</sup> See NETL Report at 15 ("wide swings in hourly output of up to 4 GW imply that increment was met by cycling natural gas combined cycle units").

<sup>80</sup> See Sierra Club Comments at 15.

<sup>81</sup> Sierra Club Comments at 15 (citing PJM Interconnection, PJM Cold Snap Performance Dec. 28, 2017 to Jan. 7, 2018 (Feb. 26, 2018), available at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20180226-january-2018-cold-weather-event-report.ashx>).

units, PJM will be unable to procure sufficient generation capacity to meet its reserve margin requirement from new or existing resources.

Importantly, the NETL Report does not measure resiliency and does not constitute a formal and thorough determination on resiliency. A full-scale measure and evaluation of resiliency and the range of threats to the bulk power system is occurring in the FERC Grid Resilience proceeding.<sup>82</sup>

**3. The Polar Vortex does not justify FES's request for DOE to prop up uneconomic coal and nuclear units in PJM.**

***a. PJM has already adopted changes in response to the 2014 Polar Vortex.***

FES argues that the 2014 Polar Vortex (and associated cold weather spikes) justifies its request for DOE emergency action to ensure the continued operation of certain existing nuclear and coal generation facilities.<sup>83</sup> PJM has already initiated and adopted changes in response to the 2014 Polar Vortex. Thus, FES fails to reconcile its Request for an Emergency Order with the many market rule changes and generation performance enhancements that have already been implemented and have demonstrated improved system performance.<sup>84</sup> Instead, PJM invokes the Polar Vortex simply to argue for prolonged operations of certain coal and nuclear units because electric supply from nuclear and coal-fired generators is critical during cold weather events.

***b. The 2014 Polar Vortex demonstrates that lessons learned have been successful.***

The two regions most directly impacted by the 2014 Polar Vortex have already undertaken detailed reviews and have implemented market rule changes to forestall a repeat performance of

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<sup>82</sup> See Grid Resilience in Regional Transmission Organizations and Independent System Operators, Docket Nos. AD18-7-000; see R-18-07

<sup>83</sup> Request at 5, 9, 17.

<sup>84</sup> See Sierra Club Comments at 10-12 (arguing that the Polar Vortex does not justify FES's request for DOE to prop up uneconomic coal and nuclear units in PJM).

the operational issues that challenged grid performance in 2014.<sup>85</sup> PJM has implemented numerous changes to its market rules that include its Capacity Performance construct and changing the timing of its day-ahead scheduling deadlines to provide gas-fired generators a better ability to submit timely pipeline nominations.<sup>86</sup> ISO New England has also implemented market rule changes that include its forward capacity market pay-for-performance rules.<sup>87</sup> Even regions not directly stressed by the 2014 Polar Vortex have used it as a “lessons learned” experience and have taken steps to improve market functionality. For example, New York ISO has initiated changes to its shortage pricing rules and improved operational monitoring on fuel availability.<sup>88</sup> MISO has implemented over 20 specific steps to reduce risks associated with grid operation during extreme weather events.<sup>89</sup>

Even though not all of the market rule changes have been implemented, the changes implemented prior to the winter of 2015 have already demonstrated a marked improvement in system performance. The winter of 2015 was remarkably similar to weather in 2014 as described by PJM:

The winter of 2015 was marked by cold temperatures similar to the winter of 2014 – with the coldest temperatures experienced during February 2015 throughout the

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<sup>85</sup> The 2014 Polar Vortex and earlier severe winter weather conditions did, however, highlight operational issues that contributed to the forced outages and poor performance, and compelled examination of the underlying causes and remedies. The regions most affected—PJM and ISO-NE—undertook detailed reviews to rectify those issues. PJM and ISO-NE each found that most, if not all, of the operational issues could be addressed if generation suppliers made investments in weatherization or increased operating budgets and commitments for future fuel deliveries. Both regions proposed (and the Commission generally accepted) market solutions that: (1) pay generation resources for better performance and allow recovery of investment in operational reliability of the resource, including forward fuel costs; and (2) impose a strong monetary penalty for poor performance—with limited to no exceptions. Comments of the ISO/RTO Council at 21, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000 (Oct. 23, 2017) (“ISO/RTO Council Comments”).

<sup>86</sup> PJM Comments, Appendix A at 3-7, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000.

<sup>87</sup> Comments of ISO New England Inc. at 11, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000 (Oct. 23, 2017).

<sup>88</sup> Comments of the New York Independent System Operator, Inc., Attachment at 5, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000 (Oct. 23, 2017).

<sup>89</sup> MISO Comments, Attachment A at 20, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000.

entire PJM footprint. Numerous cities across PJM hit their daily low-temperature records during February 2015. Due to the low temperatures and associated high electricity demand for heating needs, PJM set a new wintertime peak demand record of 143,086 megawatts the morning of Feb. 20 (hour ending 0800). The new peak record surpassed the previous all-time winter peak of 142,863 MW set Jan. 7, 2014. Some of the individual transmission zones within the PJM footprint also set all-time record winter peaks.

In addition to the extremely cold temperatures, PJM also reviewed effective temperatures or wind chill data, for select cities throughout the footprint for both 2014 and 2015. This analysis indicated January 2014 actually felt colder just about everywhere when compared to 2015, especially in Columbus, Cleveland and Chicago, where effective temperatures were between 14 and 16 degrees warmer in 2015. The significant wind chill experienced during 2014 could have contributed to the higher amount of generator forced outages encountered in 2014. By comparison, the less severe warmer effective temperature, wind chill, in 2015 may have contributed to improved generator performance.<sup>90</sup>

PJM reported improved system performance in 2015 notwithstanding the fact that certain market rule changes, such as its Capacity Performance rules, had not been implemented:

Generator performance in February 2015 showed improvement, with forced outage rates better than in January 2014. For the morning of Feb. 20, 2015, when PJM reached a new all-time winter peak, the forced outage rate was 13.4 percent, representing 24,805 MW of generation forced out of service. Although the 2015 winter peak forced outage rates represent an improvement over the 22 percent forced outage rate during the Jan. 7, 2014, peak, the 2015 rates were still above historical “normal” winter peak outage rate of between 7 and 10 percent. The performance improvements of winter 2015 over 2014 are attributed to steps PJM and generation owners initiated after the winter of 2014 experience: pre-winter operational testing for dual-fuel and infrequently run units, a winter-preparation checklist program, better communication of fuel status and increased coordination with natural gas pipelines.

A total of 168 units (9,919 MW) participated in the pre-winter operational testing. Units that participated in the pre-winter operational testing had a lower rate of forced outages compared to those that did not test.<sup>91</sup>

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<sup>90</sup> PJM Interconnection, L.L.C., *2015 Winter Report* at 5 (May 13, 2015), available at <http://www.pjm.com/-/media/library/reports-notice/weather-related/20150513-2015-winter-report.ashx?la=en>.

<sup>91</sup> *Id.* at 5-6.

Other RTOs/ISOs have also reported improved operational performance due to market rule changes that were implemented following the 2014 Polar Vortex.<sup>92</sup> Given the improved system performances resulting from the successful implementation of lessons learned from the 2014 Polar Vortex, FES fails to explain why reliance on cold weather occurrences during the 2014 Polar Vortex now provides an evidentiary basis for out-of-market subsidies to prolong the continued operation of certain coal-fired and nuclear generating facilities.

**4. The bankruptcy filing by FES, subsequent to its Request to DOE, undermines FES's claims of "emergency."**

On March 29, 2018, FES filed the instant Emergency Order Request with DOE. In FES's request, FES explained that it would likely file for bankruptcy at the end of March 2018.<sup>93</sup> On March 31, 2018—a mere two days after its Emergency Order Request — FES filed for bankruptcy in the U.S. Bankruptcy Court for the Northern District of Ohio.<sup>94</sup> FES's bankruptcy filing and the convenient foreshadowing of such bankruptcy two days earlier in the Emergency Order Request was a strategic business decision — not the result of an unforeseen and uncontrollable emergency. Thus, the planned bankruptcy filing by FES right after FES's Request to DOE undermines any and all claims of "emergency" by FES in the DOE request. Furthermore, the bankruptcy filing in fact solidifies and affirms FES's abuse of Section 202(c) of the Federal Power Act by engaging the DOE (and requiring the expenditure of resources by numerous stakeholders in the hours and days after FES's Emergency Order Request). The DOE should outright reject FES's request. It is not PJM's nor PJM's stakeholders' responsibility to help mitigate, resolve, or ameliorate FES's business and financial decisions that eventually gave way to FES's bankruptcy filing.

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<sup>92</sup> ISO/RTO Council Comments at 21-22, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000.

<sup>93</sup> Request at 8, 20, fn. 121.

<sup>94</sup> See [http://www.cleveland.com/business/index.ssf/2018/03/firstenergy\\_solutions\\_bankrupt.html](http://www.cleveland.com/business/index.ssf/2018/03/firstenergy_solutions_bankrupt.html).

**5. On-site fuel supply is not a significant contribution to reliability and resilience.**

FES argues that nuclear and coal-fired units are “the backbone of the electric system” because they are designed to run “24/7” with 25 days of on-site fuel availability. However, the assumption that a significant on-site fuel supply contributes to grid reliability and resilience is contradicted by factual history. Comments submitted by The Rhodium Group, LLC (“Rhodium”) to the grid resiliency rulemaking in RM18-1-000 support this conclusion. Relying upon data submitted to the EIA on Form OE-417 reports since the beginning of 2012, Rhodium found that:

*[b]etween 2012 and 2016, utilities reported roughly 3.4 billion customer-hours impacted by major electricity disruptions. 96% of those lost service hours were due to severe weather (Figure 2). Fuel emergencies or deficiencies at power plants resulted in 2,382 customer hours of lost service or 0.00007% of the total. 2,333 of those customer hours were due to one event in Northern Minnesota in 2014 involving a coal-fired power plant.<sup>95</sup>*

Rhodium determined that the vast majority of customer outages were the result of damaged distribution facilities.<sup>96</sup> Thus, on-site fuel supply contributes little, if anything, to actual reliability and resilience. Further, the relatively short duration of most disruptive events undermines FES’s argument that 25 days of on-site fuel availability will ensure reliability and resilience.

**D. If Reliability Concerns Were to Arise, PJM Has in Place Adequate Processes For Addressing Those Concerns.**

PJM’s generation deactivation process adequately evaluates all generation retirements for an adverse impact on reliability. In its Open Access Transmission Tariff and in PJM Manual 14D, PJM describes a detailed process that must follow when a generation retirement is announced. After such an announcement, a timetable begins in which PJM initiates an analysis and explores

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<sup>95</sup> Rhodium Comments at 3, *Grid Reliability and Resilience Pricing*, Docket No. RM18-1-000 (Oct. 23, 2017) (emphasis added).

<sup>96</sup> *Id.* at 2.



transmission solutions to enable power to continue to reliably flow to customers.<sup>97</sup> Generator retirements are also included in PJM's Regional Transmission Expansion Planning ("RTEP") process. PJM utilizes criteria to identify potential transmission system problems due to specific retiring. PJM may order transmission upgrades to keep the grid reliable in response to generator retirements.

PJM has in place Tariff provisions that provide adequate compensation for units that determined to be RMR units. Attachment K Appendix Section 6 is entitled "Must-Run For Reliability Generation" and addresses PJM's RMR process. The RMR process provides PJM with the ability to keep essential assets online. The RMR process is described in greater detail in Section 9.2 of PJM Manual 14D.

Under PJM Manual 14D, PJM may request a generating unit to operate past its desired deactivation date. Upon this notice, the generator may file with FERC for full cost recovery; alternatively, the generator owner may elect to receive avoidable cost compensation as per Part V of the PJM Tariff.<sup>98</sup>

PJM has used the RMR process infrequently, indicating that generation needed for reliability or "resilience" is not retiring and certainly not retiring prematurely.<sup>99</sup> However, these processes provide PJM the tools to make it economic to keep generators online when necessary for grid reliability. This process, and PJM's careful management of the grid, negate the need for an Emergency Order by the Department.

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<sup>97</sup> See PJM Manual 14D: Generator Operational Requirements § 9.1. See also <http://learn.pjm.com/three-priorities/planning-for-the-future/explaining-power-plant-retirements.aspx>.

<sup>98</sup> PJM Manual 14D § 9.2.

<sup>99</sup> American Manufacturers Comments at 34-39, Docket No. RM18-1-000.

**E. If Granted, the Request Would Unnecessarily Raise Energy Prices For Consumers and Directly Undercut the Tremendous Economic Advantage to the United States from Natural Gas Shale Plays.**

FES's Request to DOE seeks to impose enormous unnecessary energy costs on the American public. The advent of low priced natural gas specifically, and energy prices generally, has been, and continues to be, a monumental opportunity for the nation's energy consumers. Low natural gas prices and the resulting low energy prices in LMP-based markets provide a tremendous economic advantage to energy-intensive businesses. These businesses contribute in meaningful and tangible ways to the communities in which they are located. The natural gas Shale Plays have spearheaded a "Manufacturing Renaissance" in the United States. Requiring customers, including energy-intensive businesses, to subsidize (apparently indefinitely) large amounts of uneconomic generation sources would directly undercut this opportunity for economic growth and impede the ability of market forces to naturally select successful generation resources.

The economic benefits of shale gas production are real and tangible. The lower price of natural gas translates into lower priced electricity. As stated in *The Economist*, "In principle, all American companies and consumers benefit from lower energy prices. The effect may not always be big enough to spur heavy new investment, but it might be sufficient to keep American factories with high labor costs going in the face of foreign competition."<sup>100</sup> Economists at Citigroup and UBS predict that shale gas will lift America's Gross Domestic Product ("GDP") growth by half a percentage point a year.<sup>101</sup> Indeed, less expensive energy is cited as one factor by those who have predicted a manufacturing renaissance in America.<sup>102</sup>

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<sup>100</sup> *The Economist*, *Deep sigh of relief* (Mar. 16, 2013), available at <https://www.economist.com/news/special-report/21573279-shale-gas-and-oil-bonanza-transforming-americas-energy-outlook-and-boosting-its> (last accessed Apr. 3, 2018).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

Natural gas markets have been found to be less integrated compared to markets for other fossil fuels. As such, U.S. natural gas prices have fallen sharply and are effectively decoupled from those in the rest of the world. This offers the United States a concrete competitive advantage. If energy-intensive customers are required to subsidize uneconomic coal and nuclear generators that the RTOs have already found to be unnecessary for reliable operations, the competitive cost advantage that the Shale Plays have brought will be undercut. Simply put, the tax on businesses produced by FES's Emergency Order—if it were to be approved—would increase energy costs and would make those regions that must pay the new tax less attractive for businesses to locate or expand their operations.

Other studies have linked American natural gas development with strengthening the U.S. economy and making domestic manufacturing more competitive.<sup>103</sup> A report from the University of Michigan found that more than 200 mostly U.S.-based companies have participated in “onshoring” during the prior four years, motivated in part by the availability of less expensive natural gas.<sup>104</sup> Researchers at the London School of Economics found the estimated effect of the shale gas boon on gross output, employment, and capital investment within energy-intensive sectors is “positive throughout and significant.”<sup>105</sup> Their research showed that the “shale gas boom” led to a “relative expansion of energy intensive manufacturing in the U.S.”<sup>106</sup> Similarly, the researchers found that U.S. manufacturing exports grew “by about 10 percent on account of

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<sup>103</sup> See HIS CERA, *Fueling the Future with Natural Gas: Bringing It Home* (Jan. 2014), available at <http://marcelluscoalition.org/wp-content/uploads/2014/01/Fueling-the-Future-Executive-Summary-14Jan2014.pdf> (last accessed Apr. 3, 2018).

<sup>104</sup> University of Michigan, *Shale Gas: A Game-Changer For U.S. Manufacturing* at 14 (July 2014), available at <http://energy.umich.edu/sites/default/files/PDF%20Shale%20Gas%20FINAL%20web%20version.pdf>. (last accessed Apr. 3, 2018).

<sup>105</sup> Centre for Economic Performance, *On the Comparative Advantage of U.S. Manufacturing: Evidence from the Shale Gas Revolution* at 24 (Nov. 2016), available at <http://cep.lse.ac.uk/pubs/download/dp1454.pdf> (last accessed Apr. 3, 2018).

<sup>106</sup> *Id.* at 32.

their energy intensity since the onset of the shale revolution.”<sup>107</sup> In short, the study found that the “price differential between the U.S. compared to Asia and Europe is thus likely to persist in turn helping to lift U.S. manufacturing.”<sup>108</sup> Granting FES’s Request could potentially affect the existing price differential and, thus, undercut U.S. manufacturing.

Many view the United States as currently in the midst of an energy revolution. With such rapid fundamental changes afoot, it is reasonable to expect “winners” and “losers.” Low natural gas prices may have an adverse impact on certain market participants, such as certain inefficient legacy coal units and single-unit nuclear plants. As a general matter, however, the shale gas revolution should be viewed as an opportunity to establish a competitive advantage as the vast majority of our nation’s economy that has benefited from lower energy prices. FES’s Request seeks an outcome that would undeniably increase both near-term and long-term energy costs for all customers, particularly energy-intensive businesses, while providing unprecedented financial security and subsidies to a discreet and limited class of market participants that own inefficient legacy units. Such a result cannot be viewed as sound public policy or as capable of producing just and reasonable rates, free from the Federal Power Act’s requirement that rates shall not be unduly discriminatory or preferential. In fact, such an approach threatens the economic outlook for all businesses that evaluate energy costs as a component of whether to site, maintain, or expand businesses in a particular region.

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 33.

**F. FES's Argument that Energy Price Formation in PJM Does Not Adequately Compensate Baseload Resources is Invalid and Inappropriate in an Emergency Order Request; FES's Argument on Price Formation is More Appropriately Presented and Examined in the Ongoing PJM Stakeholder Process.**

In its request, FES argues there is an urgent need for reforming energy market rules surrounding price formation in order to more appropriately compensate baseload resources like coal and nuclear facilities.<sup>109</sup> Through its Request, FES seeks to undermine competitive markets and the series of the Commission's orders seeking and promulgating open access and competitive wholesale energy markets. FES's argument on energy price formation is more appropriately presented and examined in the ongoing PJM stakeholder process instead of in an emergency order request.

**1. Resilience is already a critical part of reliability assessments.**

In comments to the Grid Resilience proceeding in AD18-7-000/RM18-1-00, PJM explained that it already considers resilience factors because many resilience actions are "anchored in...the existing reliability standards."<sup>110</sup> Resilience is a critical part of reliability assessments; however, resilience is not a wholly distinct and separate concept. FES has not demonstrated that DOE or the Commission should carve out resilience and treat it as a discrete characteristic of wholesale electricity markets. Resilience is embedded within independent reliability standards that are promulgated and enforced by the North American Electric Reliability Council ("NERC"), the not-for-profit electric reliability organization that develops and enforces reliability standards and is subject to FERC's oversight. NERC is well-positioned to provide intelligence, knowledge,

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<sup>109</sup> Request at 8, 14, 16, 19, 27.

<sup>110</sup> PJM Comments, Docket No. AD18-7-000 at 4 (filed Mar. 9, 2018).

metrics, and threat analyses to apply to resilience vulnerability and high-impact, low-frequency events that test grid resilience.<sup>111</sup>

PJM has explained that the PJM Bulk Electric System is safe and reliable today because it has been designed and operated to meet all applicable reliability standards.<sup>112</sup> Therefore, the grid operator in PJM, tasked with ensuring reliability, does not contend there are safety and reliability issues in the PJM footprint. PJM, a non-profit service company, is better positioned to evaluate reliability issues and emergencies surrounding certain uneconomic generating units than FES. In a March 30, 2018 letter response to FES's Request, PJM again affirmed: "PJM can state without reservation there is no immediate threat to system reliability."<sup>113</sup>

## **2. FES has not demonstrated a dearth of capacity in PJM.**

Not only has FES failed to demonstrate a lack of capacity in PJM, but PJM has indicated that the opposite is the case.<sup>114</sup> PJM's study, *PJM's Evolving Resource Mix and System Reliability*, released in 2017, stated that "[t]he expected near-term resource portfolio is among the highest-performing portfolios and is well equipped to provide the generator reliability attributes" based on the requirements of the PJM Open Access Transmission Tariff, the PJM Operating Agreement, the PJM Reliability Assurance Agreement, and applicable NERC reliability standards.<sup>115</sup> Even as the potential future resource mix moves in the direction of less coal and nuclear generation, the PJM Evolving Resource Mix Study found generator reliability attributes of frequency response,

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<sup>111</sup> See, e.g., NERC's State of Reliability 2017 Report (June 2017), available at [https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/SOR\\_2017\\_MASTER\\_20170613.pdf](https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/SOR_2017_MASTER_20170613.pdf).

<sup>112</sup> PJM Comments, Docket No. AD18-7-000 at 4 (filed Mar. 9, 2018).

<sup>113</sup> PJM Letter to Secretary Perry re FES's Request for Emergency Relief under Section 202 of the Federal Power Act at 1 (Mar. 30, 2018).

<sup>114</sup> See American Manufacturers' Comments at 31-32 and n. 67.

<sup>115</sup> PJM Interconnection, L.L.C., *PJM's Evolving Resource Mix and System Reliability*, at 4 (Mar. 30, 2017) (internal footnote omitted) ("*PJM Evolving Resource Mix Study*"), available at <http://www.pjm.com/~media/library/reports-notices/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx>.

reactive capability, and fuel assurance may decrease while flexibility and ramping attributes increase.<sup>116</sup> To be clear, PJM's study identified areas of future attention, but the study did not suggest a reliability problem of such a magnitude that it needed to be addressed imminently.

### **3. Energy prices are currently reflecting lower fuel prices.**

A fundamental characteristic of PJM's LMP is that it drives short-term market outcomes toward pricing for all energy on the basis of the cost of the marginal unit, which is the least efficient unit, the unit with the most expensive fuel source, or both. In 2008-2009, when natural gas prices were high, customers shouldered the burden with respect to higher energy prices. During that time of record high LMPs, customers raised repeated concern, if not objection, that LMP drove short-term market outcomes toward pricing for all energy on the basis of high-priced natural gas.<sup>117</sup> The response then to customer concerns was effectively that "the market was the market," with high prices being only a function of gas prices and nothing can or should be done to ameliorate high LMPs. With the shale gas revolution and abundant natural gas and low fuel prices, LMPs have reached historic lows.

In PJM, the Independent Market Monitor has recognized that LMPs are low but that LMPs are not too low.<sup>118</sup> PJM energy prices track closely with fuel prices and indicate an efficiently functioning market.<sup>119</sup> Energy markets and capacity markets work together to allow resources an opportunity to recover their costs. In a time of low energy prices, it should not be surprising that the capacity market needs to do more "heavy lifting" to support ISO/RTO resource adequacy and reliability imperatives and return the "missing money" that was often cited as the initial need for

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<sup>116</sup> *PJM Evolving Resource Mix Study* at 5.

<sup>117</sup> *Id.* at 15 ("The majority of short run marginal costs for power production are fuel costs.").

<sup>118</sup> Testimony of Joseph Bowring Before the House Committee on Energy & Commerce, Subcommittee on Energy, State of Electricity Markets at 4 (Oct. 5, 2017), *available at* <http://docs.house.gov/meetings/IF/IF03/20171005/106470/HHRG-115-IF03-Wstate-BowringJ-20171005-U3.pdf>.

<sup>119</sup> IMM Comments at 15, Docket No. RM18-1-000.

capacity markets. Even with low energy prices, the PJM Independent Market Monitor has found that at least 50 percent of all nuclear units recovered avoidable costs from all markets, including the capacity markets.<sup>120</sup> Based on the twelve months ending June 2017, at least 75 percent of all nuclear units recovered avoidable costs from all markets.

It also warrants noting that several other initiatives have been implemented recently that may have impacts on LMP in PJM, such as the Capacity Performance requirements, increasing the PJM energy offer price cap, allowing the triggering of transient shortages, and adding new steps to the operating reserve demand curve for shortage pricing. These changes should be given an opportunity to address any perceived concerns that may still linger. For example, on September 21, 2017, as reserve margins reduced and began to approach reserve requirements, PJM real-time LMP and reserve prices rose significantly due to the recently implemented changes to the shortage pricing operating reserve demand curves. On this day, between 2:00 p.m. and 5:00 p.m., more than half of the pricing for this period was impacted by a market change that triggers shortage pricing as reserves *approach* a reserve requirement rather than trigger shortage pricing only after reserve requirements have been violated.<sup>121</sup> This change to shortage pricing was implemented on July 12, 2017.

**4. Confidence in markets is tested when changes to energy market price formation can be viewed as a thinly veiled effort to provide price support for certain classes of resources.**

Confidence in markets is tested when changes to energy market price formation can be viewed as a thinly veiled effort to provide price support for certain classes of resources or certain market participants. Industrials advocated for restructuring over twenty years ago to allow the

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<sup>120</sup> *Id.* at 18.

<sup>121</sup> See PJM Interconnection, L.L.C., *Real-time Market Results* at 6 (Sept. 21, 2017), available at <http://www.pjm.com/-/media/committees-groups/committees/oc/20171010/20171010-item-19-real-time-market-results.ashx>.



market to discipline such market entry and exit; it is a fine line between adjusting market rules and engineering preferred pricing outcomes. Coal-fired units with an average age of 49 years old comprise the majority of capacity that is at risk of retirement.<sup>122</sup> It is reasonable to query how long these assets should reasonably be expected to be operational. Without substantial evidence of reliability problems with the current time-tested approach to energy price formation, FES's Request can reasonably be viewed as a reckless attempt to engineer preferred pricing outcomes to support certain legacy units.

Low natural gas prices may have an adverse impact on certain PJM market participants but, as a general matter, the shale gas revolution should be viewed as a remarkably beneficial opportunity for this region to establish a competitive advantage for businesses. If the market was not allowed to develop during the first decade of the 2000s during a time of high natural gas prices, the shale gas revolution, shale finds, and associated technologies (all leading to today's lower natural gas prices) may not have robustly developed. Unilaterally modifying energy price formation to benefit certain legacy units will increase, to some unknown degree, costs to customers, including businesses that evaluate energy costs as a component of whether to site or expand business in a particular region. Low energy prices send a signal that resources may be uneconomic and should retire—that is an efficient market result. Choosing certain higher cost generation technologies and not letting the market function could chill future investments in alternative energy technology and other resources.

**5. Unit inflexibility should not be used as an excuse to inflate energy prices.**

To the extent price formation is an issue that warrants attention, many fundamental issues must be considered before the bedrock of PJM's energy markets is upset. FES's characterization

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<sup>122</sup> IMM Comments at 19-20, Docket No. RM18-1-000.

of the facts in its Request implies that certain inflexible resources are being required to operate at a loss. That is simply not the case. Inflexible coal or nuclear units serving load may operate at a loss during a particular hour, but PJM makes a unit that is dispatched whole over an entire day period; losses in some hours are netted with profits in other hours.

In a nutshell, if the generation units were flexible, the units would be backed down or shut down when they became uneconomic to run. An approach that allows these inflexible resources to set prices does not comport with economic logic or the fundamentals of LMP. Simply put, inflexible units may operate and serve load, but, if the inflexible units were to retire, other presumably flexible units would replace them. Such is the reality of using markets to discipline market entry and exit.

**6. Adoption of changes to energy pricing rules would severely disrupt contracting for retail supply.**

Given the heavily regulated nature of PJM's energy market, a common feature of industry-standard agreements for wholesale transactions and for service to retail customers is a "change in law" provision or "regulatory change" clause.<sup>123</sup> Such provisions authorize suppliers to pass along additional costs caused by a change in law or regulatory change to their customers currently under contract. As the Department considers FES's call to override the fundamentals of LMP in PJM, the Department should be cognizant of the ripple effects of such an action on contracts across the industry, including potentially default service agreements and retail agreements.

While ISO/RTO markets across the country have experienced numerous rule changes, the LMP price-setting fundamentals in PJM have been virtually unchanged. Where LMP mechanics have changed in other markets, such changes have occurred after significant stakeholder processes

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<sup>123</sup> See Energy Research Council, *Are fixed-price electricity supply contracts really fixed?* (2013), available at <http://energyresearchcouncil.com/Are-fixed-price-electricity-supply-contracts-really-fixed.html> ("Many supplier contracts have "pass-through" or "change-in-law" provisions, which can affect a customer's electricity bill.") (website sponsored by, among others, Constellation, an affiliate of Exelon).

that included market simulations that previewed the resulting pricing under the new regime.<sup>124</sup> This provided ample time for operational analysis to be performed and market participants to understand the implications of the change.

Such a significant change as FES proposes, especially without appropriate time to understand the potential market implications, adds to uncertainty and may lead some market participants to re-open existing contracts using the industry-standard “change in law” or “regulatory change” provisions.

In this context, some suppliers may argue that the higher prices produced by the change in law or regulatory change are costs that should be shifted to their counterparties. For retail energy contracts and default service agreements, quantifying the impact of a change in law or regulatory change of this magnitude and complexity would be speculative and costly. Customers would have little information or leverage to dispute the amount of additional costs their suppliers will require them to pay to avoid default.

This Request should not become a vehicle to short-circuit price formation changes. Certainly, the record does not support a finding that existing price formation is unjust and unreasonable. The Federal Power Act requires more evidentiary support before significant costs are put upon customers to the benefit of the owners of nuclear and coal-fired generation.<sup>125</sup>

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<sup>124</sup> . For example, MISO began its discussions of extended LMP, which PJM referenced in its Comments, in at least 2010, if not before. MISO submitted proposed tariff revisions to implement extended LMP (Initial ELMP Filing) in December 22, 2011, in Docket No. ER12-668-000, which were conditionally approved on July 20, 2012. Extended LMP was not implemented until March 1, 2015. A status report was filed in ER12-668 on August 29, 2016.

<sup>125</sup> *Id.* at 35.

**G. FES Seeks to Undermine the Commission's Recent Order Rejecting the Grid Resiliency Pricing Proposal and the Ongoing FERC Grid Resilience Proceeding and Stakeholder Processes.**

**1. FES failed to request rehearing of the Commission's January 8 Order rejecting the Grid Resiliency Pricing proposal.**

On January 8, 2018, the Commission terminated the proposed resiliency rule focused on providing out-of-market compensation to generators with on-site fuel capability and instead instituted a proceeding in AD18-700 seeking comments and responses on resilience to enable the Commission to holistically examine the resilience of the bulk power system.<sup>126</sup> In that Order, the Commission rejected the same types of arguments and rationale that FES advances in its Emergency Order Request. FES failed to seek reconsideration of the Commission's January 8 Order rejecting the Grid Resiliency Pricing proposal. Now, FES seeks to advance the same types of arguments and rationale that the Commission has already rejected. DOE must reject FES's forum-shopping and abuse of process and agency resources. FES had the opportunity to ask for reconsideration it seeks now before DOE, but declined to request rehearing at FERC on its January 8 Order rejecting the Grid Resiliency Pricing proposal. Now, without any reference to changed circumstances, FES seeks to re-litigate the same issues at DOE. In doing so, FES provides little evidentiary support of its own and fails to confront the large body of record evidence amassed at FERC in RM18-1-000 from industry, experts, RTOs and ISOs, states, and other stakeholders demonstrating that the relief FES requests is unnecessary and unrelated to reliability or resilience and would result in unjust, unreasonable, and unduly discriminatory or preferential rates.

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<sup>126</sup> Grid Resilience in Regional Transmission Organizations and Independent System Operators, 162 FERC ¶ 61,012 (Jan. 8, 2018).

**2. The Commission's Resilience Docket and PJM's ongoing stakeholder processes are more appropriate forums to address FES's concerns.**

The Commission is currently evaluating grid resilience issues in RTOs/ISOs and potential recommendations and reforms.<sup>127</sup> FES complains that the Commission's ongoing docket on resilience is "too little, too late."<sup>128</sup> However, FERC's ongoing proceeding is precisely the forum to thoroughly address and evaluate—free from a hyperbolic expression of emergency<sup>129</sup>—the complex and multi-layered legal and technical issues surrounding resilience. FERC is also the more appropriate forum to address the longer-term generation resource issues regarding FES's concerns that a substantial portion of the generation fleet will be retiring over a number of years. Although FERC found no urgent threat to the grid's reliability to justify the extraordinary action proposed again now, it did initiate an administrative proceeding to better define and understand resilience and determine whether additional steps are needed to ensure resilience. FirstEnergy attempts to side-step and undermine that proceeding with its Emergency Order Request to DOE.

**3. FES's Emergency Order Request proceeding should not be used to short-circuit or circumvent any stakeholder and FERC processes that are currently investigating and evaluating price formation changes.**

FES's Request seeks to short-circuit or circumvent any stakeholder process that is underway to consider any need for price formation changes. Price formation issues require lengthy stakeholder discussion and debate. For example, MISO stakeholders considered Extended LMP

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<sup>127</sup> See Grid Resilience in Regional Transmission Organizations and Independent System Operators, 162 FERC ¶ 61,012 (2018) (terminating DOE's proposed rule focused on providing out-of-market compensation to generators with on-site fuel capability and instituting proceeding in AD18-700 seeking comments and responses on resilience to enable the Commission to holistically examine the resilience of the bulk power system).

<sup>128</sup> Request at 10.

<sup>129</sup> See Request at 33 ("The time for talk is over. We find ourselves at a crisis point...").

for at least five years before it was implemented in March 2015.<sup>130</sup> Furthermore, FERC will continue to investigate energy price formation as it impacts resiliency and baseload generation.<sup>131</sup>

PJM had issued its Whitepaper on Energy Price Formation on June 15, 2017.<sup>132</sup> PJM proposed enhancements to energy price formation on November 15, 2017.<sup>133</sup> On December 21, 2017, the Commission instituted a Federal Power Act Section 206 paper proceeding to investigate PJM's practices regarding the prices of fast-start resources.<sup>134</sup> In the PJM stakeholder process, the Energy Price Formation Senior Task Force is evaluating proposals to enhance energy market pricing to ensure "prices accurately reflect the true incremental cost of serving load and minimize the need to recover those costs through out-of-market uplift payments."<sup>135</sup> The task force recently posted an updated Issue Charge<sup>136</sup> and Problem Statement.<sup>137</sup>

The PJM stakeholder process on energy price formation issues is ongoing and underway. PJM should be allowed to complete a meaningful stakeholder process "to explore ideas, to discuss options, and to allow all PJM stakeholders an opportunity to represent their interests."<sup>138</sup> In

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<sup>130</sup> See Midcontinent Independent System Operator, Inc., *ELMP Parallel Operational Analysis* (June 2014), available at <https://cdn.misoenergy.org/20140603%20MSC%20Item%2005e%20ELMP%20Parallel%20Operation%20Analysis%2073949.pdf>.

<sup>131</sup> See generally FERC Dockets RM18-1-000 and AD18-7.

<sup>132</sup> See PJM Interconnection, L.L.C., *Energy Price Formation and Valuing Flexibility* (June 15, 2017), available at <http://www.pjm.com/~media/library/reports-notice/special-reports/20170615-energy-market-price-formation.ashx>.

<sup>133</sup> See <http://www.pjm.com/~media/library/reports-notice/special-reports/20171115-proposed-enhancements-to-energy-price-formation.ashx> (PJM Proposed Enhancements to Energy Price Formation, Nov. 15, 2017).

<sup>134</sup> *PJM Interconnection, L.L.C.*, Order Instituting Section 206 Proceeding and Commencing Paper Hearing Procedures and Establishing Refund Effective Date, 161 FERC ¶ 61,295 (Dec. 21, 2017); see generally FERC Docket No. EL18-34-000.

<sup>135</sup> Energy Price Formation Senior Task Force, <http://www.pjm.com/committees-and-groups/task-forces/epfstf.aspx> (last accessed Apr. 4, 2018).

<sup>136</sup> Energy Price Formation Issue Charge, <http://www.pjm.com/~media/committees-groups/task-forces/epfstf/postings/energy-price-formation-issue-charge.ashx?la=en> (last accessed Apr. 4, 2018).

<sup>137</sup> Energy Price Formation Problem / Opportunity Statement, <http://www.pjm.com/~media/committees-groups/task-forces/epfstf/postings/energy-price-formation-problem-statement.ashx?la=en> (last accessed Apr. 4, 2018).

<sup>138</sup> IMM Comments, RM18-1-00, at 35.

addition to the options identified by PJM in its Price Formation Whitepaper, other options for addressing measurable and verifiable reliability or resilience concerns exist. The Commission must provide adequate latitude and discretion to the stakeholder process to allow all reasonable options to be considered, including those options offered in the Independent Market Monitor's Comments in the grid resilience docket.<sup>139</sup>

FES has failed to provide any evidentiary foundation supporting a finding that existing price formation is unjust and unreasonable. The Federal Power Act requires more stakeholder vetting and evaluation before significant costs are put upon customers to the benefit of the owners of nuclear and coal-fired generation.

**H. FES's Clearing of the BRA Through the 2020/2021 Delivery Year Demonstrates that FES Currently Has an Obligation, and Associated Compensation For that Obligation, to Run Its Units Through May 31, 2021.**

In successfully clearing the BRA through the 2020-21 delivery year, FES willingly took on an obligation, and the associated compensation for that obligation, for that time period. FES's units are committed through that time frame. Despite making these economic decisions, FES now seeks a bailout.

It should be noted that there were many years in which nuclear and coal units generated substantial returns. At the time, industrial entities were deeply concerned about locational-marginal pricing. Meanwhile, utilities such as FirstEnergy were receiving stranded cost payments based on these low numbers.

If the Secretary were to grant FES's Request, customers would be placed in the untenable position of being responsible for the *higher* of cost- or market-based rates. When LMP prices are higher, driven by higher fuel costs, customers have been compelled to pay such market-based

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<sup>139</sup> IMM Comments, RM18-1-00, at 42-45.

prices. Now, driven by lower cost prices, the Request would lead customers to guarantee cost recovery for certain types of generation, including legacy units, in contravention of fundamental and long-standing tenets of FERC ratemaking.<sup>140</sup> Under this approach, customers cannot reasonably view their rates to be “just and reasonable.”

Plainly stated, energy-intensive businesses and other consumers that depend on reliable and reasonably priced energy to produce products and provide services would be required to provide an apparent long-term bailout to certain market participants. Such a bailout cannot be justified on reliability grounds.<sup>141</sup> The Request asks to break contracts and seeks unprecedented executive authority to impose new cost structures without due process. If such an Emergency Order were issued, the incredible progress of a market-oriented approach for electric regulation would be heedlessly damaged at the stroke of a pen.

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<sup>140</sup> See *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

<sup>141</sup> See, e.g., PJM Interconnection, L.L.C., *PJM's Evolving Resource Mix and System Reliability*, at 3, 5, 6, and 8 (Mar. 30, 2017), available at <http://pjm.com/-/media/library/reports-notices/special-reports/20170330-pjms-evolving-resource-mix-and-system-reliability.ashx?la=en>.



## II. CONCLUSION

For the reasons set forth above, the PJM Consumer Representatives respectfully request that the Department deny FES's Request for an Emergency Order.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

/s/ Robert A. Weishaar, Jr.

By \_\_\_\_\_

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Counsel to the PJM Industrial Customer Coalition  
and on behalf of the PJM Consumer  
Representatives

Dated: April 5, 2018

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 5<sup>th</sup> day of April, 2018.

/s/ Robert A. Weishaar, Jr.

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April 6, 2018

**VIA ELECTRONIC MAIL**

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**RE: Comments of the New Jersey Board of Public Utilities**

Dear Secretary Perry, Assistant Secretary Walker, and Deputy Assistant Secretary Jereza:

Please accept this letter and attached Comments of the New Jersey Board of Public Utilities ("NJBPU") concerning FirstEnergy Solutions Corp.'s ("FES") Request for Emergency Action under Section 202(c) of the Federal Power Act.



Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: *Timothy R. Oberleiton*  
Timothy R. Oberleiton  
Deputy Attorney General

cc: Service List (w/encl., by electronic mail)

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

**Request for Emergency Order Pursuant )  
To Federal Power Act Section 202(c) By )  
FirstEnergy Solutions Corp. )**

**DOE Docket No. \_\_\_\_\_**

**COMMENTS OF THE  
NEW JERSEY BOARD OF PUBLIC UTILITIES**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC's") Rules of Practice and Procedure,<sup>1</sup> 18 C.F.R. § 385.211, the New Jersey Board of Public Utilities ("NJBPU") hereby protests First Energy Solutions Corp.'s ("FES") March 29, 2018 Request for Emergency Order Pursuant to Federal Power Act ("FPA") section 202(c), 16 U.S.C. § 824a(c), pending with the Department of Energy ("Department").

**COMMENTS**

On September 28, 2017, the Secretary of Energy issued a letter with a Notice of Proposed Rulemaking ("Proposed Rule") for final action by the FERC.<sup>2</sup> The Proposed Rule directed the FERC to consider requiring certain Regional Transmission Organizations ("RTOs") and Independent System Operators ("ISOs") to establish a tariff mechanism providing for: (1) the purchase of energy from an eligible "reliability and resilience resource" and (2) the recovery of costs and a return on equity for such

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<sup>1</sup> Guidance published on the Department's website points to the use of Federal Energy Regulatory Commission ("FERC") Rules where Department regulations at 10 C.F.R. § 205.370, *et. seq.*, are silent. *See, e.g.*, Department Answer to Procedural Questions Concerning Rehearing of Department Order, District of Columbia Public Service Commission, at 2 Docket No. EO-05-01 (December 30, 2005). Order No. Order No. 202-05-3.

<sup>2</sup> *See* Letter from the Secretary of Energy and Proposal for a NOPR dated September 28, 2017, at 1, Docket No. RM18-1 (filed September 29, 2018) (hereinafter "September 28 Letter").

resources (i.e., a “resilience rate”).<sup>3</sup> For support, among other things, the Proposed Rule cited the retirements of baseload generation, particularly coal and nuclear resources, and “a growing recognition that organized markets do not compensate resources for all of the attributes they contribute to the grid, including resilience.”<sup>4</sup> FERC initiated Docket No. RM18-1 for the purpose of considering and taking final action on the Proposed Rule.<sup>5</sup> Numerous comments were provided from a wide variety of stakeholders, ranging from utilities, generators, federal and state legislators, state regulatory commissions, state attorneys general, industrial customers, environmental organizations, consumer advocates, mining companies, other industries and individuals.<sup>6</sup>

NJBPU was among the commenters in Docket No. RM18-1. In its comments, NJBPU stated its long-held position that FERC and the RTOs have a vital role in ensuring that a diverse mix of resources contributes to the reliability and resiliency of the electric power grid.<sup>7</sup> During restructuring, the NJBPU cautioned that price should not be the only consideration.<sup>8</sup> The NJBPU recognized that the shift to competitive markets may lower bills for ratepayers at a greater long-term impact to the State of New Jersey.<sup>9</sup> NJBPU urged early action at a federal or regional level to address its concerns that the

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<sup>3</sup> *Grid Reliability and Resiliency Pricing*, 162 FERC ¶ 61012 at P 2 (Jan. 8, 2018).

<sup>4</sup> *Id.* at P 3.

<sup>5</sup> *Id.* at P 1.

<sup>6</sup> *Id.* at P 5.

<sup>7</sup> *Comments of the New Jersey Board of Public Utilities*, at 1, 3, Docket No. RM18-1 (Oct. 23, 2017) (*citing Comments of NJBPU and NJDEP*, at 9 Docket Nos. RM95-8, RM94-7-001 (Jan. 30, 1996)).

<sup>8</sup> *Restructuring the Electric Power Industry in New Jersey, Findings and Recommendations, Final Report*, Docket No. EX94120585Y at 127-128 (April 30, 1997) (“NJBPU Final Report on Restructuring”) available at <https://dSPACE.njstatelib.org/xmlui/bitstream/handle/10929/41482/p9761997b.pdf?sequence=1&isAllowed=y>. This Final Report was presented to Governor Christie Todd Whitman and the State Legislature to inform the development of legislation that would ultimately result in restructuring the utility industry in New Jersey.

<sup>9</sup> NJBPU Final Report on Restructuring at 127.

market would shift toward overreliance on certain resources.<sup>10</sup> Where no action was taken at the federal or regional level, NJBPU preserved the right to take action at the State level to ensure the State continued to benefit from a diverse portfolio of resources.<sup>11</sup> In response to the Proposed Rule, the NJBPU supported the concept of thoughtful and reasoned federal or regional efforts, rather than hastily-implemented solutions yielding substantial uncertainty and significant cost increases for ratepayers.<sup>12</sup>

By Order issued January 8, 2018, the FERC terminated the rulemaking proceeding and initiated a new proceeding to specifically evaluate the resilience of the bulk power system.<sup>13</sup> The FERC determined that, “[w]hile some commenters allege grid resilience or reliability issues [exist] due to potential retirements of particular resources, we find that these assertions do not demonstrate the unjustness or unreasonableness of the existing RTO/ISO tariffs. In addition, the extensive comments submitted by the RTOs/ISOs do not point to any past or planned generator retirements that may be a threat to grid resilience.”<sup>14</sup> Nevertheless, the FERC initiated a new proceeding, Docket No. AD18-7-000, to holistically examine the resilience of the bulk power system. In doing so, the FERC recognized that “it must remain vigilant with respect to resilience

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<sup>10</sup> *Comments of NJBPU and NJDEP*, at 10, Docket Nos. RM95-8, RM94-7-001 (Jan. 30, 1996); *In the Matter of the Energy Master Plan Phase II Proceeding to Investigate the Future Structure of the Electric Power Industry, Order Adopting and Releasing Final Report*, at 15-16, Docket No. EX94120585Y (April 30, 1997) (“NJBPU Order Adopting Final Report”). This document is the NJBPU’s Order adopting recommendations regarding restructuring in the State of New Jersey.

<sup>11</sup> *NJBPU Order Adopting Final Report*, *supra*, at 16; During restructuring, no regional or federal action addressed the State’s concerns, which left the State of New Jersey to adopt its own standards. See generally Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49, *et seq.* (incorporating Renewable Portfolio Standards, Environmental Disclosure Requirements, *etc.*); see N.J.S.A. 48:3-50(a)(7) (stating that it is the policy of New Jersey to “[p]rovide diversity in the supply of electric power throughout this State.”).

<sup>12</sup> *Comments of the New Jersey Board of Public Utilities*, at 3-4, FERC Docket No. RM18-1 (Oct. 23, 2017).

<sup>13</sup> 162 FERC ¶ 61,012 (Jan. 8, 2018).

<sup>14</sup> 162 FERC ¶ 61,012, at P 15 (internal citations omitted).

challenges, because affordable and reliable electricity is vital to the country's economic and national security.”<sup>15</sup>

The Department accepted FERC's decision. In a public statement, in response to the FERC decision, Secretary Perry stated that he “look[s] forward to continuing to work with the Commissioners to ensure the integrity of the electric grid.”<sup>16</sup> A spokeswoman for the Department responded to the FERC decision to initiate a new proceeding with the following quote: “The Secretary is pleased that FERC heard his call and is directing the regional transmission organizations and independent system operators to take steps to continue to address these important issues.”<sup>17</sup> Ultimately, the Department stated that it “plans to work with FERC and all other relevant stakeholders including the RTOs and ISOs as they discuss how best to address the important issue of the long term reliability and affordability of energy in this country.”<sup>18</sup>

FES also accepted FERC's decision when it did not seek rehearing of FERC's Order. However, FES now improperly advances to the Department the same types of arguments and rationale that the FERC rejected. Rehearing was the appropriate course, under the FPA, for FES to seek the relief advanced in its Emergency Request. The Emergency Request should be rejected as an inappropriate attempt at rehearing the issue beyond the statutory timeframe; re-litigation of an issue that has been addressed by the FERC and accepted by the Department.

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<sup>15</sup> News Release, “FERC Initiates New Proceeding on Grid Resilience, Terminates DOE NOPR Proceeding” (Jan. 8, 2018), *available at* <https://www.ferc.gov/media/news-releases/2018/2018-1/01-08-18.asp#.Wst66C7waUk>

<sup>16</sup> News Release, “Department of Energy Responds to FERC Decision on Proposed Rule” (Jan. 8, 2018), *available at* <https://www.energy.gov/articles/department-energy-responds-ferc-decision-proposed-rule>

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*



Notwithstanding the Department's support for FERC's new proceeding on resiliency, FES criticizes the docket on resilience as "too little, too late."<sup>19</sup> NJBPU respectfully disagrees. Although FERC did not find an urgent reliability threat sufficient to justify the Proposed Rule (and, by extension, the FES Emergency Request), it did initiate an administrative proceeding to better define and understand resilience and determine whether additional steps are needed to ensure resilience. FERC's ongoing proceeding is the appropriate forum to reasonably, thoughtfully, and thoroughly evaluate at a federal and regional level the many complex issues related to resiliency. The Department indicated its pleasure with this response and stated that it planned to work with FERC in this process.<sup>20</sup> FES would have the Department renege those public statements and undermine the FERC proceeding by Emergency Order. NJBPU urges the Department to continue on its chosen course and reject the FES Emergency Request.

Moreover, the Department should not countenance the FES attempt to circumvent the on-going price formation stakeholder processes. PJM should be allowed to complete a meaningful stakeholder process "to explore ideas, to discuss options, and to allow all PJM stakeholders an opportunity to represent their interests."<sup>21</sup> The NJBPU supports such stakeholder vetting and evaluation before significant costs are put upon ratepayers.

The FES Request is further flawed in that it is overbroad and contrary to precedent. On this point, the NJBPU supports and shares the opinion of the PJM

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<sup>19</sup> FES Request, *supra*, at 10.

<sup>20</sup> News Release, "Department of Energy Responds to FERC Decision on Proposed Rule" (Jan. 8, 2018), *available at* <https://www.energy.gov/articles/departments-energy-responds-ferc-decision-proposed-rule>

<sup>21</sup> Comments of the Independent Market Monitor for PJM, at 35, Docket No. RM18-1 (October 10, 2017).

Consumer Representatives.<sup>22</sup> In Section B.1, the PJM Consumer Representatives explain, with examples, how the FES Emergency Request is inconsistent with the Department's prior Emergency Orders. In section B.2, the PJM Consumer Representatives explain, with ample citations to the Department's own regulations, how the FES Emergency Request improperly seeks to vest the Department with ratemaking authority. That authority properly resides with FERC. NJBPU shares and supports these concerns and urges the Department to give these concerns due consideration.

Finally, NJBPU shares the concern that the FES Emergency Request extends beyond the limited scope of Section 202(c) of the FPA. On this point, the NJBPU supports and shares the opinion of the PJM Consumer Representatives as expressed in Sections A of their Protest.<sup>23</sup> The Department has never exercised Section 202(c) authority where the threat is several years away. In clearing the Base Residual Auction ("BRA") through the 2020-21 delivery year, FES willingly took on an obligation – and the associated compensation for that obligation – for that time period. And, as PJM notes in its Comments, FES' units are committed through that time frame.<sup>24</sup>

Ultimately, the NJBPU has long held the belief that there may be a problem with price formation such that certain positive attributes are not recognized. NJBPU first expressed concerns and sought a federal or regional solution during restructuring. NJBPU repeated those concerns in its comments in the DOE NOPR.<sup>25</sup> However, the NJBPU cautioned against a hastily-implemented solution that may cause more harm than

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<sup>22</sup> Protest of the PJM Consumer Representatives to the Emergency Order Request of FirstEnergy Solutions Corp., Sections B.1 and B.2 at 9-15, DOE Docket No. \_\_\_\_ (April 5, 2018).

<sup>23</sup> *Id.* at Section A at 4-9.

<sup>24</sup> Response of PJM Interconnection, LLC, at 1, DOE Docket No. \_\_\_\_ (March 30, 2018).

<sup>25</sup> Comments of the New Jersey Board of Public Utilities, at 4, Docket No. RM18-1 (October 23, 2017).

good.<sup>26</sup> The FES Emergency Request appears to be an effort to obtain just such a hasty, and potentially costly, solution. Thus, the NJBPU asks that the Department reject the Emergency Request and urges continued, reasoned, and thoughtful analysis of resilience concerns in the existing dockets and stakeholder forums.

### **CONCLUSION**

NJBPU respectfully asks that the Department give full consideration of these comments.

Respectfully submitted,

**NEW JERSEY BOARD OF PUBLIC  
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**DATED:** April 6, 2018

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<sup>26</sup> *Id.*

### CERTIFICATE OF SERVICE

I hereby certify that I have on this 6<sup>th</sup> day April, 2018, served via electronic transmission, the foregoing upon each person designated on the official service list<sup>27</sup> compiled by the Secretary in this proceeding.

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**DATED:** April 6, 2018

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<sup>27</sup> While our office is not aware of an “official” DOE service list in this matter, we have created a list comprising the interested parties known at this time.